THE HISTORY OF TYTHES.

That is,

The *Practice* of PAYMENT of them.

The *Positive* LAWS made for them.

The OPINIONS touching the *Right* of them.

A REVIEW of it

Is also annext, which both *Confirms* it, and directs in the use of it.

By *J. SELDEN.*

Nec partis studiis agimur. Sed sumsimus arma
Consiliis inimica tuis, IGNAVIA fallax!

M. DC. XVIII.

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To the moſt honour'd

Sir ROBERT COTTON

of *Connington*,

Knight and Baronet.

Noble Sir,

JUſtice, no leſs than Obſervance, urges me to inſcribe this Hiſtory *of* Tythes *to your name. So great a part of it was lent me by your moſt ready Courteſie and able Direction, that I reſtore it rather than give it you. And it cannot but receive an increaſe of eſtimation from your intereſt thus ſeen in it. For to have borrow'd your help, or us'd that your ineſtimable Library (which lives in you) aſſures a curious Diligence in ſearch after the inmoſt, leaſt known and moſt uſeful parts of Hiſtorical Truth both of Paſt and Preſent Ages. For ſuch is that Truth which your Humanity liberally diſpenſes; and ſuch is that which by Conference is learned from you: ſuch indeed, as if it were, by your Example, more ſought after; ſo much head-long Errour, ſo many ridiculous impoſtures would not be thruſt on the too credulous, by thoſe which ſtumble on in the Rode, but never with any care look on each ſide or behind them: that*

is, those which keep their Understandings always in a weak Minority that ever wants the Authority and Admonition of a Tutor. For, as on the one side, it cannot be doubted but that the too studious Affectation of bare and sterile Antiquity, *which is nothing else but to be exceeding busie about nothing, may soon descend to a Dotage; so on the other, the Neglect or only vulgar regard of the fruitful and precious part of it, which gives necessary light to the* Present *in matter of* State, Law, History, *and the* Understanding of good Authors, *is but preferring that kind of Ignorant Infancy, which our short life alone allows us, before the many Ages of former Experience and Observation, which may so accumulate years to us as if we had lived even from the beginning of Time. But you best know this; in whom that useful part is so fully eminent, that the most Learned through* Europe *willingly acknowledge it: and so open hath your Courtesie ever made the plenteous store of it to me, that I could not but thus offer you whatsoever is in This of mine own also, as a symbole of some thankfulness. It was at first destin'd to you. And however through the hasty fortune that (I know not why) it suffered at the Press, some pieces of it have been dispersed without the Honour that your*

Name

Name might adde to them; I ſhall be yet ever ſo ambitious of that Honour, that the whole ſhall never (for ſo much as I can prevent) be communicated without this prefixt teſtimony of Duty to you. Receive it favourably, Noble Sir, and continue to me that Happineſs which I enjoy in that you neither repute me unworthy of your Love, nor permit me in Ignorance when I come to learn of you.

From the *Inner-Temple*,
April IV. cIↃ. DC. XVIII.

THE

IT hath even ſo happen'd with not a few of the Malicious (what through lazy Ignorance, what through peeviſh Jealouſie) at their firſt ſight or hearing of the name of this *Hiſtory of Tithes*, as it was wont with thoſe raw Novices, that, upon their firſt admiſſion to the ſacred Myſteries of the Gentiles, troubled and frighted themſelves with a world [a] of falſe Apparitions while they thought of what they ſhould ſee in the inmoſt Sanctuary at the unknown preſence of their Deity. And doubtleſs, the Prieſt had not a little work to perſwade them that what they ſhould there meet with, was not an unlucky *Empuſa*, not a formidable *Mormo*, not a wanton *Cobalus*, not a miſchievous *Fury*, not indeed any thing that their idle brains, being ſuch meer ſtrangers to the abſtruſeſt parts of Truth, had faſhion'd out. The many fancies that Malice, Ignorance, and Jealouſie have fram'd to themſelves touching this of Mine, have been no leſs ridiculous; and ſome equally fearful, but equally falſe. And I muſt here firſt play the Prieſt alſo, and ſo clear, if it were poſſible, thoſe Fancies, by proteſting that it is not written *to prove that Tythes are not due by the Law of God*; not written to prove *that the Laity may detain them*, not to prove *that Lay hands may ſtill enjoy Appropriations*; in ſum, not at all *againſt the maintenance of the Clergie*. Neither is it any thing elſe but it ſelf, that is, a meer Narration, and the *Hiſtorie*

[a] *Proclus in Platonic. Theolog. lib. 1. cap. 3. & lib. 3. cap. 18.*

rie of Tythes. Nor is the law of God, whence Tithes are commonly deriv'd, more diſputed of in it, than the Divine Law, whence all Creatures have their continuing ſubſiſtence, is enquired after in *Ariſtotles* Hiſtory of living Creatures, in *Plinies* Natural Hiſtory, or in *Theophraſtus* his Hiſtory of Plants; or than the Juſtice of the old Courts of *Rome*, is examin'd in *Brodæus* his Hiſtory of them, or the convenience of the Civil and Canon Laws in that of *Rivallius*. Nor was any thing, that belonged to the Title, purpoſely omitted. Nor was any piece of it ſtoln from any other mans notes. That as the reſt alſo hath been moſt maliciouſly imputed by ſome that ſo impudently dare conjecture (though they be far enough from being either—*arte aut ſcientia Divini*) and as judiciouſly cenſure it or me, as thoſe in *Lucian*, could *Euripides*, that were weekly ſtark mad in Rime till Winter, by reaſon of what they had heard of his Tragedies in Summer, and could neither judge at all of what they ſaid nor yet poſſibly hold their peace. But they know, there are never wanting long ears ready ſtretcht out to baſe detraction; and that animates them. I know not how otherwiſe to confirm theſe proteſtations than by ſending him, that believes me not here, to the view of the whole. He may be there further ſatisfied: and ſhall then ſee alſo that it is not of the Pitch of the Doctrine of the Breviarie, or within the compaſs of Pocket-learning. Nor will it, I think, look like what were patcht up out of *Poſtils*, *Polyantheas*, common places

place Books or any of the reſt of ſuch excellent Inſtruments for the advancement of Ignorance and Lazineſs. Nor is any end in it, to teach any Innovation by an imperfect Pattern had from the muſty Reliques of former time. Neither is *Antiquity* related in it to ſhew barely what hath been (for the ſteril part of *Antiquity* which ſhews that only and to no further purpoſe, I value even as ſlightly as dull Ignorance doth the moſt precious and uſeful part of it) but to give other light to the Practice and doubts of the preſent. Light, that is clear and neceſſary; nor could ſuch as have ſearcht in the ſubject ſee at all often, for want of ſuch Light. But *illos non peto, piſcem peto.* Neither hath it at all wanted the moſt approving cenſures of ſuch as are of choiceſt Learning, ableſt Judgment, and truly *Decumatiſſimi* aſwell in worth as Title. Nor is it at all material what any one ſhall caſt on it through his ſecure confidence only, in any of thoſe old [a] Enſigns of diſſembled Ignorance or Gravity, the Beard, the Habit, and Title. It is for ſuch to learn by, not at all to cenſure. And none of the Ingenuous and Learned, that read it, will be backward, I think, to allow it for Truth, as he did that firſt licenſed it for the Preſs with *Ita eſt*, and ſubſcription of his Name.

a *Iſidor. Peluſiota l. 1. Epiſt. 29.*

But we leave this prepoſterous Admonition in Negatives (yet by reaſon of the head-long importunity of ſuch as have in great number already miſconceived it, they were neceſſary and could not elſewhere have had ſo fit place) and ſhortly thus delineate what it is by the *end and purpoſe*

us of four Orders exempted, and make the *Hospitalers* and those of S. *Johns* of *Jerusalem* to be two of them, with other such most gross and ridiculous absurdities? and it is a common, but most deceiving argument among them, affirmatively to conclude *Fact* or *Practice* of Tithing from what they see ordained for Tithes in any old *Canon* of the Church: as if every thing so ordained, necessarily had also a following use: it being indeed frequent enough to find Canons directly contrary to following Practice; and that even in the proceedings of the Canon-Law, which (as the body of it is) was never received wholly into practice in any State, but hath been ever made subject in whasoever touches the temporalties or maintenance of the Church (which come from Lay-men) to the variety of the secular Laws of every State, or to National Customs that cross it. Is it enough to prove that Parish Churches, in *England*, were regularly ever to be repaired by the Parsons, because the general [d] Canon Law is so? or that a Clergyman might not have bequeath'd any chattels wherin he had right in respect of his Church, because also by that [e] Law he might not? in *England*, general Customs of the contrary in both Cases still [f] held, and in many other as you see in *Lindwood*, who knew both the general practice here and the Canons, and often also teaches their differences in other cases: very many like may be found in other States, by comparing their immemorial Customs and old Ordinances that are against the Canons.

d *Extr. tit. de Eccl. ædific. c. 4. de his.*

e *Extr. tit. de Offic. judicis Ordinarii c. 4. cum vos.*

f *Lindwood. c. Nullus tit. de consuetudine. & tit de offic. Arch. diac. Archidiaconi. verb. reparatione. & de Testament. c. ut Cleric. verb. legitima.*

 and

and that both in the Eastern and Western Churches: and for the Eastern Canon Law, passages are found to this purpose in *Zonaras* [g] and *Balsamon*, the two chief and ancient Canonists of that part. The Laity at pleasure commonly limited the Canon Law especially where it toucht their dignities or possessions (and that aswell before *Luther* so derogated from the autority of it by burning it at [h] *Witteberg* in a publick Assembly, in despite of the Pope, as after) which might be manifested by a world of examples: but it is most clear to all that know History. To argue therefore from affirmative Canons only to Practice, is equal in not a few things (and especially in this of Tithing) to the proving of the practice of a Custom from some consonant Law of *Plato*'s Common-wealth, of *Lucian*'s men in the Moon, or of *Aristophanes* his City of Cuckoes in the Clouds. To supply therefore the want of a full and faithful Collection of the *Historical* part, was the *end* and *purpose* why this was composed which might remain as a furnisht Armory for such as enquire about this Ecclesiastique Revenue, and preferring Truth before what dulling Custom hath too deeply rooted in them, are not unwilling to change their old Akorns for better meat.

As touching the *Argument* of it; the whole being XIV. Chapters, the first VII are thus filled, the *first* hath what is, in best authority of the ancients, belonging to those Tithes paid before the *Levitical* Law: the *second* the several kinds paid by

g Vide sis utroque *in Can. Conc. Chalced.* 12. & 6. *in Trullo* 38. & 55. & *Balsam. in Chalced Can.* 15 & 28. præter id quod de *Agapio & Gabadio* Episcopatum *Bostrenscm* petentibus, subjungitur Concilio *Carthaginiensi.*

h *Sleidan. Commentar. lib.* 2.

by the *Jews* under the Law: and this from *Ebrew* Lawyers. The *third* ſhews the Practice of the *Romans*, *Grecians*, and ſome other *Gentiles*, in paying or vowing them. Then the whole time of Chriſtianity being quadripartitely divided (with allowance of about XX. years more or leſs to every part) takes up the next *Four* Chapters, in which the *Practice of payment* of Tithes, *Arbitrary Conſecrations*, *Appropriations*, *Infeodations* and *Exemptions* of them, eſtabliſhment of *Parochial right* in them, as alſo the *Laws both Secular and Eccleſiaſtick*, with the *Opinions* of *Divines* and *Canoniſts* touching them, are in their ſeveral times manifeſted; but ſo only, that whatſoever is proper to this Kingdom of *England* either in *Laws* or *Practice*, either of *Payment* or of *Arbitrary Conſecrations*, *Appropriations*, or *Infeodations*, or eſtabliſhment of *Parochial right*, together with a Corollary of the *ancient Juriſdiction* whereto they have been here ſubject, is reſerved all by it ſelf to the next *Seven* Chapters. But every of the XIV. have their Arguments prefixt, which may diſcharge me of further Declaration in this place. By this time, I truſt, you conceive what the name of *Hiſtory* in the Title pretends: and the *Tythes* ſpoken of purpoſely in it (for perhaps it is needful to admoniſh that alſo) are only ſuch as either have been paid, vow'd, or dedicated to holy uſes, or elſe give light to the conſideration of the performance or omiſſion of ſuch payment. Neither the *Decimæ Saladinæ*, nor the *Decimæ Papales* (which were

wont to be impoſed) nor the *Decima litium* in the Imperials, nor the old *ratio Decimarum* upon the *Lex Pappia*, have had place here, nor the like, which are no more to this ſubject than the Tithes paid to the Crown by our Clergie, or by thoſe of the Burroughs by grant in Parliament, or the *Terrages* in Tenths reſerved by Leſſors often in *France* and *Spain*, or the Tenths anciently paid in ſome places, as Impoſt upon Merchandiſe, or that old Cuſtom of *England*, in paying the *Aurum Reginæ*, that is a Tenth part of as much Money to[i]ſher as was given at any time to the King, or other ſuch. Nor had the Tithes of houſes in *London*, place here [ ] otherwiſe than as they occur in thoſe Acts of Parliament and the Decree under *Henry* the eight, that mentions the Miniſters maintenance by the name of Tithes. For before that Decree, however the LII. Farthings paid on Sundays only were near the juſt Tithe of every X^s. Rent (that is about ½) and were perhaps thought on by that name (as may be collected out of *Lindwood*) yet theſe join'd with the other Offerings of great Feſtival days, made up indeed only a certain competency of maintenance, but could not properly be reputed among Tithes; neither in regard of their *Value*, nor (as compared with the ancient Inſtitution of Tythes among the Jews) in reſpect of their *Nature*. For their *Value* came to much more than a Tithe, as alſo that doth which hath the name of Tythe at this day in *London*: neither is there reaſon enough why the LII. farthings that were offer'd on

i De ea re conſulas ſi plura velis *Joſcelinum de Barkelund, cap.* 24. Ms. in Bibl. Cottoniana & Codicem illum *Gervaſii Tilburienſ.* dictum *in Scaccario Archivis, & Chap.* 8. *fol.* 39.

on Sundays ſhould be ſeverally, and as divided from the other Offerings, thought on to this purpoſe. And for their *Nature* before theſe Acts and the Decree; I here offer only what I find in a ſhort diſcourſe, tituled, *A Deviſe how the Curats of London may be provided of ſufficient Livings*, written under *Henry* the Eight, and remaining yet among the Records of the Exchequer: The Author of it firſt ſhews that all Miniſters of Gods word ſhould give freely their labours in the Church, and be maintain'd of the Tithe of the free gifts of the Earth; as of Cattel, Corn, and Fruit; which he ſuppoſes is as freely given them by the Almighty, through the labour of the people, as the preaching of the Word and adminiſtration of Sacraments is to the people through the labour of the Miniſters. But he permits not that any money or other profit, being not *living gifts*, as he calls them, is by the Law of God Titheable: ſo that where no ſuch *living gifts* and increaſe are, there no Tithes (as Tithes) are payable to them, as he concludes. Nor indeed is any mention of other Tithes in the *Levitical* Law, than of the encreaſe of the earth in Fruit and Cattel, that is of the gain only out of thoſe more natural Trades (which [*l*] *Ariſtotle* elegantly ſtiles βίοι αὐτόφυτον ἔχοντες τὴν ἐργασίαν) of tilling the Earth and breeding of Cattel, and that which holy Writ calls תבואה *Theboah*, that is, *increaſe* or *revenue*, where the Law of predial Tithing is iterated, is underſtood by the *Jewiſh* Doctors of the fruits and increaſe, given us out of the ſoil; and

[l] *Polit. a. cap. 5.*

and is well Paraphraſed by the Septuagint when they turn it τὰ γενήματα τῆς γῆς, that is, *the increaſe of the earth:* and in the vulgar it is expreſſed by *fruges.* But then, *It is to ſe by what Law Curats of Churches in* London *can have* (ſo are the very ſyllables of that diſcourſe) *any living of the people otherwiſe but like as the people by their own conſents will give them for ther Office doing. In very dedde they muſt have levyngs to kepe them out of neceſſite: and thereby it is to ſe how in* London *they cannot receyve ther levyngs of Godd ly no lively gifts of grace, like as in the Countrey. But in* London *they muſt receive their levings of mens gifts; that is mony which is every mans own, for their Office doing. The* Pope *ly his Law nor by his Bulls cannot compell no man te giffe his own gode to theym for their Office doing more then people will conſent to giff theym: for* Chriſt *ſaith that their leving is freely given them of Godd, if they do ther Office to ſee all peple worke. Therefore that if the peple have not labors and levings, they ought to have none, nor can make no Law whereby to axe no mans goode. Therefore that leving which they have had in* London *hath been by the conſents of the peple which hath long time given them* xiv^{d}. *of every noble rated ly the rents of Houſes which hath been riche levings: wherewith they not content but over that hath procured of the peple money ſo many weys by caſualties of Beryals, Cryſtnings, Weddings, Obits, and Offerings, ybe and ſecretly rifelyth mens conſciences taking privy Tithes of whatſoever they can get, be it out of evil-goten goodes: howſoever*

they

they can get it, they call it their duty. And thence he ſays ſome Benefices were worth C^li^. ſome LXXX^li^. ſome C. marks, others L^li^. and then he ſhortly adviſes how the Miniſters maintenance ſhould be otherwiſe there limitted and levied. But who ſees not enough now that what is called *Tithes of houſes* in *London*, is rather call'd ſo only than is at all ſo? yet becauſe the name of Tithes in thoſe Acts of Parliament, is given to the Minſters maintenance there, it had been perhaps reputed negligence to have omitted the remembrance of them, in the *courſe* of compoſing it. The Teſtimonies were choſen by weight, not by number; taken only thence whither the margin directs, never at ſecond hand. Neither affected I to muſter up many petty and late names for proof of what is had wholly by all from ancient Fountains. The fountains only, and what beſt cleared them, ſatisfied me; and I ſuppoſed every judicious Reader would be ſo beſt ſatisfied alſo. For in meer matter of elder ſtory, what credit can *Nauclerus*, *Cario*, *Cuſpinian*, or the numerous reſt of latter time, add to the teſtimonies of thoſe Ancients yet extant, from whom they borrowed what ever they have new dreſt of preceeding ages? *Petrus Comeſtor*, or *Ludolphus de Saxonia*, may as well increaſe the credit of holy Writ, as thoſe other may the truth of ſuch Hiſtories as inſtructed them in common with the reſt of poſterity. Neither at all wiſh I that this of mine ſhould gain any ſtrength of Truth from my name alone, but from thoſe authorities which I have deſigned

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ſigned and brought, both for Elder, Late, and Preſent times, out of ſuch both Printed and Manuſcript *Annals*, *Hiſtories*, *Councils*, *Chartularies*, *Laws*, *Lawyers*, and *Records* only as were to be uſed in the moſt accurate way of ſearch that might furniſh for the ſubject, yet alſo I have not neglected the able judgments of ſuch of the learned of later time, as give light to former ages, but I ſo prefer'd the choiceſt and moſt able, that I have wholly abſtain'd from any mention or uſe here of thoſe many Ignorants that (while they write) rather inſtruct us in their own wants of ability, than direct to any thing that may ſatisfie. If through ignorance I have omitted any thing in the Hiſtory or the Review, that deſerved place in them; who ever ſhall admoniſh me of it ſhall have a moſt willing acknowledgment of his learning and courteſie. But all the bad Titles that are ever due to abuſe of the holieſt obteſtation, be always my companions, if I have purpoſely omitted any good authority of ancient or late time, that I ſaw neceſſary, or could think might give further or other light to any Poſition or part of it: For I ſought only Truth, and was never ſo far ingaged in this or ought elſe as to torture my brains or venture my credit to make or create Premiſſes for a choſen Concluſion, that I rather would than could prove. My Premiſſes made what Concluſions or Conjectures I have, and were not bred by them. And although both of them here not a little ſometimes vary from what is vulgarly receiv'd, yet that happen'd not at all from any

any desire to differ from common Opinion, but from another course of disquisition than is commonly used; that is, by Examination of the truth of those Suppositions which patient Idleness too easily takes for clear and granted. For the old Scepticks that never would profess that they had found a Truth, shew'd yet the best way to search for any, when they doubted aswel of what those of the Dogmatical Sects too credulously receiv'd for infallible Principles, as they did of the newest Conclusions; they were indeed questionless too nice, and deceiv'd themselves with the nimbleness of their own Sophisms, that permitted no kind of established Truth. But plainly, he that avoids their disputing Levity, yet, being able, takes to himself their liberty of enquiry, is the only way that in all kinds of Studies leads and lies open even to the Sanctuary of Truth, while others, that are servile to common Opinion and vulgar suppositions, can rarely hope to be admitted nearer than into the base court of her Temple which too speciously often counterfeits her inmost Sanctuary: and to this purpose also is that of † *Quintilian*, most worthy of memory, *Optimus est in discendo, patronus incredulus.*

† *Instit Orator. lib.* 12. *cap.* 8.

For the Sum of the Performance in behalf of the Clergy; I dare confidently affirm, that never before was there towards so much Humane Law Positive for the Payment of whole Tithes, observed to publique view as is here discovered; and that especially in the VIII. Chapter for the Clergy of *England*. And plainly he

that talks of Tithes without reference to such *positive Law*, makes the object of his discourse rather what he would have should be, than any thing that indeed is at all. For what State is in all Christendom wherein Tithes are paid *de facto*, otherwise than according to humane Law positive? that is, as subject to some Customes, to Statutes, to all civil disposition. If they be in truth due, *Jure Divino* (which Divines must determine of) they remain equally so aswell after as before humanLaws made touching them. But that is a question dayly controverted; and among the Clergy. Now, who-ever disputes it, and relyes only on *Jus Divinum*, or the holy Scripture, for the right of Tithes, doth but make way for him, whom he cannot perswade that they are due by the law of God, to think that they are no way due. Which questionless was the original cause of the Opinions of such as fasly taught them not at all payable, but arbitrarily as Alms, even since Parochial right in them established; I mean the *Dominican* and *Franciscan* Fryers, and those other of a far different stamp, *Wicliffe*, *Erasmus*, and the like. Had they sufficiently thought of the Constitutions and Practice of Christian States, whereby Tithes had been variously dedicated for the maintenance of the Evangelical Priesthood, and setled for other holy uses, either by continuance of time, by the owners conveyance, or by any such other civil Title (the strength whereof is immediately founded in human Law) what colour could they have

have had to think that they had been only Alms? for whatever is lawfully eſtabliſhed by a civil Title, is clearly *debitum Juſtitiæ*, not *Charitatis*. What brain then, except one bewitch'd, can think that human poſitive Law and common Practice, which uſually either declares or makes alſo a poſitive Law, are not moſt carefully to be ſought after in inquiries touching this ſacred Revenue, which is no otherwiſe enjoyed in any State than as that Law hath ordained and permits. And let *Human Laws*, *Practice*, and *Opinions* be as their Authors will; yet whatſoever argument may be found in the law of God for the right of Tithes, remains ſtill as untoucht and equally of his former power, as the heat and light of heaven ever did, notwithſtanding the uſe of Fire had upon earth. And the truth is, that divers of them that writ, with more will than judgment, for Tithes, fall often from their *Jus Divinum*, before they are aware, and talk of them as ſuppoſed due alſo by human poſitive Law of Practice. But they are far enough from ſhewing what or where that Law or Practice is. What do they elſe, when they confound Tithes and conſecrated lands together? and apply that to Tithes which is equally to be ſpoken of lands given to the Church? I truſt they mean not that the Church had an original Title alſo, *Jure Divino*, to lands arbitrarily conſecrated to it. Let not then either the purpoſe or convenience of this Hiſtory be valued, from what diſtemper'd Malice, Ignorance, or Jealouſie have cryed it down with in corners.

The learned Frier *Bacons* moſt noble Studies being out of the rode of the lazie Clergie of his time, were vehemently at firſt ſuſpected for ſuch as might prejudice the Church. *Reuchlin* and *Bude*, the one for his *Ebrew*, the other for his *Greek*, were exceedingly hated becauſe they learned and taught what the Friers and Monkes were meere ſtrangers to. Others about their time had like Fortune. Neither was any one thing in the beginning of the Reformation ſo unwillingly receiv'd or more oppos'd by ſuch as labour'd that Ignorance might ſtill continue in her triumph, than that ſingular light to the clearing of error, the Greek Text of the New Teſtament, firſt publiſht in print by *Eraſmus*; and it was ordain'd (as he ſaies) under great penaltie in I know not what Colledge of *Cambridge*, that no Fellow of the houſe ſhould be ſo impious as bring it within the gates. For the World hath never wanted ſtore of ſuch Blocks laid in the way of Learning, as willingly endure not any part of curious diligence that ſeeks or teaches whatſoever is beyond their commonly received *Nihil ultrà*. But there are others that both can judge and do wiſh for all light to Truth; ſuch they were that even while *Ignorance* yet held her declining Empire defended thoſe Worthies, *Bacon*, *Bude*, *Reuchlin*, *Eraſmus* and the reſt that ſuffered: and to doubt whether this of mine ſhall find ſuch alſo, were but to queſtion whether every man were yet a malicious Rebel to Truth, and wholly without Ingenuity, that performs even as much in foſtering her, as Time doth in breeding her. But

But neither is the Work alone taxt by miſtaking of the Subject, but alſo in regard of the Author; what hath a *Common Lawyer* to do (ſo they murmur) with Writing of Tithes; for by that name it pleaſes them to ſtile me; and I muſt confeſs, I have long laboured to make my ſelf worthy of it. But I would their diſcretions alſo would deſign out to whom it belongs more to write the *Hiſtory of Tithes*, than to a *Common Lawyer*. I expect not ſuch a ſottiſhneſs, as that they ſhould ſo much as dream it to be more proper to any of the other ſingle profeſſions of this Kingdom; except to a *Divine*, or a *Civilian*; under which name, becauſe thoſe which practice the Canon Laws here (according as the Common Laws permit) take their Degrees, in the Civil Law, I comprehend alſo the Canoniſt; and uſe hath here made the name of *Civil Law*, to denote[a] both *Civil* and *Canon*. For the *Divine*; what is there in the courſe of his Study reſtrained to his profeſſion, that can near enough inſtruct him in the *Laws* and *Practice*, eſpecially of the *Chriſtian* times. Nor is the *Practice* or *Laws* of Tithes among the *Jews*, as they are delivered & interpreted by their Doctors, more indeed reſtrained to the courſe of *Divinity*, than of *Law* and *Hiſtory*. But ſhould a Civilian rather have dealt with it? if he; then either (according to what we underſtand by that name in *England*) as a *Civilian*, or as a *Canoniſt*. If as a *Civilian*; he ſhould then have made that proper to himſelf touching which, in the whole body of his Law (though

[a] *Alberic. Gentilis de poteſtate Regis abſoluta*, Sen. diſput. 1.

(though he take in also *Theodosius* his Code, the *Basilica* and the *Novels* of the latter Eastern Emperors) not the least mention is found of Tithes belonging to the Church. Indeed, a case is put by *Ulpian* of [b] vowing of Tithes, which some old ignorant and barbarous Doctors understand of Tithes among Christians. But they were long since laught at for it by him that [c] first happily labour'd in the restoring to that Profession, the lost neatness and elegancy of the Text. That was clearly spoken of the Roman use only, & of vowing to *Hercules*, or the like. But should the *Civilian* as a *Canonist* have done it? what in all his *Decrees*, *Decretals*, and *Extravagants*, though he joyn many armies of his Doctors, directs him to the *Practice* of the *Jews*, *Gentiles*, or *Christians*? where shall the *Canonist* or the *Civilian*, or the *Divine*, in the courses of their proper study, find the many *Secular Laws* made in behalf of the Clergy for Tithes? where the ancient practice of payment? If it be clear then (as I hope none hath the impudence to deny it) that neither the *Divine*, nor *Civilian*, nor *Canonist*, by the course of their own appropried Studies, can come to what is necessary in the knowledge of the *History of Tithes*, it will be as clear that none of them could challenge the medling with it as a right specially belonging to any of their Professions. But neither indeed is it proper to any one alone of those that are commonly made Professions. The truth is, both it and not a few other enquiries of subjects too

[b] L. 2. *Si quis* ff. *de polliciti.*

[c] *Budæus ibid.* & *in l. quicunque* ff. *de Institut. actions.*

too much unknown, fall only under a far more general Study; that is, of true *Philologie* the only fit Wife that could be found for the moſt learned of the Gods. She being well attended in her ἐγκύκλια διακονήματα, or daily ſervices of Enquiry, by her two Hand-Maids *Curious Diligence* and *Watchful Induſtry*, diſcovers to us often from her raiſed Tower of Judgment, many hidden Truths, that, on the level of any one reſtrained Profeſſion, can never be diſcerned; and every Profeſſion takes from her to it ſelf (as it was long ſince [d] obſerv'd) ſome neceſſary part not elſewhere to be ſought for; not much otherwiſe than as the Subaltern Sciences do from their Superiors, or as they all do from that *Univerſality* or *Firſt Philoſophy*, which is but the more real part of true *Philologie*, and eſtabliſhes principles to every Faculty that could not of it ſelf alone know how to get them. But is not the company of this great Lady of Learning, with her Attendants, as fit for a Student of the *Common-Laws of England*, as for any other, pretending what Faculty ſoever? I never heard that ſhe was engaged alone to any beſide *Mercury*. Nor find I any conditions in the Marriage 'twixt her and *Mercury*, that ſhe ſhould favour any one particular Profeſſion more than another. I know there have been and are many Common Lawyers of other States (for every State in Chriſtendom is governed by its own *Common Laws* and *Cuſtoms*, and hath truly its *common Lawyers* as is further ſhew'd towards the end of the *Review*) ſo far from be-

d Apud *Mart. Capellam lib. 2. de Nuptis Philologiæ & Mercurii, & de Philologes aliquot veris conſulas, Quintilian. Inſtit. Orator. l. 2. cap. ult.*

THE

ing strangers to Her that they are all to be reputed of her chiefest Darlings; and some of them are hardly equalled among any other Professors; witness in *France* those ever honour'd names, *Bude*, *Cuiacius*, *Brisson*, *Turaquel*, *Pithou*, *Pasquier*, *Le Thou*, *Hexault*, *Berterie*, *Savaron*, and others; in the Empire, *Gruter*, *Freher*, *Ritterhuse*; in the United Provinces, *Groot*, *Heuter*, and the like elsewhere. For these all were or are practicers of the various *common* or *secular Laws* of their own Nations, although they studied the *Imperials* and *Canons* in the University; and who of the Learned knows not what light these have given out of their studies of *Philologie*, both to their own and other Professions? and that in rectifying of Story, in explication of good Authors, in vindicating from the injury of time both what belongs aswel to sacred as prophane studies? why then may not equally a *common Lawyer* of *England* use this *Philologie*? and by consequent be a fit Author of this *History of Tythes*, as of a proper issue of *Philologie*? it being indeed much more proper also to Philologie in a Common Lawyer, than in one of any other Profession. For the two chief parts of it (that is, *Practice* of payment and the *Laws* of Tithing, that either are in force or ever were received touching them in any State) were always and are part of the proper Object of his Studies: and what ever *Divines* or *Canonists* conclude of them; it is the *Secular* or *Common Laws* only that according to Customs, and various Ordinances permit or restrain the

the Canons in legal exaction of them, and that in other States aſwell as in *England*: for howſoever it be affirm'd by [*e*] ſome which enough accurately think not of it, that the Clergy every where in the Weſtern Church, being ſcarce a hundreth part of the People, are enricht with whole Tithes of fruits of the Earth and of Cattel; yet it is certain that in no State of that Church, whole Tithes are univerſally paid. But frequently Cuſtoms, not only of a *Modus* but *de non decimando* are by force of Secular Law practiſed: witneſs for the Empire, is in that Diet of [*f*] *Norimberg* under *Charles* the Fifth, where the Lay-Princes of the Empire complain againſt the Church for offering to put their Canons for Tithes in practice; *Etſi Laici per multa annorum curricula de certis eorum prædiis, neq; majores neque exiguas, ut vocant, præſtiterint Decimas, &c.* As much for *Spain* is in [*g*] *Gouaruvias*; for *Italy*, [*h*] in *Vgolin*, [*i*] *Cajetan*, and others; for *France*, in *Papon* on the Cuſtoms of *Burbon*, *Boerius* on thoſe of *Berry*, *de Graſſalio*, beſide the many Arreſts of Parliament that are adjudged againſt the Canons. But theſe things are more particularly ſhew'd in the 7th. Chapt. wherein (as in the reſt) we have affected rather what is Autority enough, than what is various. Who now can ſhew colour why this was not a Work proper enough for a Common Lawyer? But this whole Premonition, I think, is as well more than is neceſſary to the truly judicious, as it may perhaps ſeem leſs than what ſatisfies to the numerous Pretenders, that neither know any way

[*e*] *Eodin. de Republ. lib. 5. c. 2.*

[*f*] *Comit. Norimberg. 1522. Gravamine 45.*

[*g*] *Variar. Reſol. lib. 1. c. 17. & Practic. qu. 35.*

[*h*] *De Officio & poteſtate Epiſc. part 1. cap. 9.*

[*i*] *Ad 22. D. 18. q. 87.*

that lies out of their beaten Rode, nor value Books but as Stationers do, nor admit willingly of any other kind of Studies than ſuch as are more like ſordid Occupations than Liberal Profeſſions. But I ſtay you too long here, Reader. Try now how I have perform'd my promiſe; ſpare not to try with your moſt cenſorious examination;

——— ſed magis acri
Judicio perpende; & ſi tibi Vera videtur,
Dede manus; aut, ſi Falſa eſt, accingere contra.

THE

Of Tithes *before the Law.*

CAP. I.

I. Melchizedek *had Tithes only of the Spoils of War given him by* Abraham. Ἀκροθίνια *denotes Spoils of War, and perhaps also Profits taken from the ground, or* Ruta cæsa.

II. Jacobs *Vow and payment of Tithes. Both* Abraham *and* Jacob *were Priests when they paid Tithes. In whom the Priest-hood was before the Law.*

III. *Whether any certain Quantity were observed in the Offerings of* Cain *and* Abel.

IV. *A Cabalistick Operation in numbers by which Tithes and the First-Fruits, offered by* Abel, *might have a mystical identity. Such operations were amongst old Christians also, but meerly vain.*

How among the Jews *Tithes were paid or thought due.*

CAP. II.

I. *First-Fruits, and Heave-Offering (that is* sixtieth parts *at least) first were paid out of the* Fruits *of the Earth.*

II. *The first Tithe was paid to the Levites (who out of that paid a Tithe to the Priests) and then the second Tithe.*

III. *The errour of them that make a third Tithe. The second Tithe of every third year spent on the Poor: What they take the Year of Tithing to signifie in* Deuteronomy.

IV. *Above a sixth part was yearly paid by the Husbandman: but no Tithe by him to the Priests.*

V. *How their Cattel were tithed.*

VI. *A discontinuance of Payment among them. Honester Over-seers chosen for the true payment.* Demai, *that is, things doubtful, whether Tithes were paid of them or no. Passages in* Epiphanius *and S.* Chrysostom, *of their Tithing.*

VII. *Their Tithing of every Herb: What their Canonists hold Titheable.*

VIII. *Their Law of Tithing (after the destruction of their second Temple,* ceased, *by the Doctrine of their Canonists; which teaches also that they are not to pay elsewhere than in the Land of* Israel, *and some adjacent Countries.* Presbyteratus Judæorum totius Angliæ *anciently granted by the* English *Kings.*

Tithes how paid, or due among the Gentiles.

CAP. III.

I. *Some* Romans *paid to some Deities, and sometimes only, a Tenth of Spoils; of procede of Merchandise; of their Estates; but usually also by Vow, which bound the Heir or Executor.*

II. Festus *is falsly cited for a general Custom of payment of Tithes among the Ancients.*

III. *Examples of Tithes paid among the* Grecians.

IV. *How the assertions of a General Use of giving Tithe to the Gods among the* Grecians, *are to be understood; and why* δεκατοῦσθαι, *that is,* to Tithe, *signifies also* to Consecrate.

V. *A*

V. *A Tithe paid to* Hercules *of* Tyre, *and* Sabis *an* Arabian *Deity, the ſame with* Jupiter Sabazius.

In the firſt four hundred years after Chriſt.

CAP. IV.

I. *No uſe of Tithes occurs till about the end of this four hundred years. Offerings and Monthly Pay for maintenance of the Church in the Primitive times.* Diviſiones Menſurnæ. Sportulæ.

II. *Payment of Tithes of Mines and Quarries to Chriſtian Emperors. The Wealth of the Church envied.*

III. *The Opinion of* Origen *touching Tithes.*

IV. *Conſtitutions of thoſe times, that mention them, are of no credit.*

From about the year CCCC. *till* DCCC.

CAP. V.

I. *Tithes were now paid in divers places, to* Abbots, *to the* Poor, *to the* Clergie.

II. *Some Conſecrations were then made in perpetual right, at the pleaſure of the Owner.*

III. *That ſtory of* Charles Martel *his taking away Tithes, and making them* feodal, *cannot be juſtified.*

IV. *The Opinions of S.* Ambroſe, *S.* Auguſtine, *S.* Hierom, *and S.* Chryſoſtom: *The firſt two teach, the Tenth due by Gods Law; the other two perſwade only that a leſs part ſhould not be offered.*

V. *Of Canons, for the payment of Tithes, that are attributed to this Age.*

Between

CAP. VII.

I. *Payment of Tithes, how performed.*

II. *Arbitrary Conſecrations of them alone (like Grants of Rents-charge) at the Lay-owners choice, to any Church or Monaſtery, were frequent; and ſometimes Lay-men ſold them to the Church.* Redimere Decimas.

III. *Appropriations of them with Churches; wherein they paſſed as by themſelves, from the Patron ſeverally and directly in point of intereſt. The beginning of Pariſh Churches. Diſpoſition of the Offerings received there. Lay-foundations of Pariſh Churches. The intereſt that Patrons claimed. Right of Advowſon. The ceremonie of putting a Cloth or Robe upon the Patron, at the Conſecration of the Church. The Uſe of Inveſtitures, by which (as by livery of Seiſin) Lay-Patrons gave their Churches.* Commendatio Eccleſiæ. *Beneſice. None anciently received the Character of Orders, but when alſo the Ordination was for the Title of ſome Church. Thence came the later uſe of Epiſcopal Inſtitution. Whence ſome Patrons came to have moſt part of the Tithes.* Canonica portio. *The Clergie and Councils againſt Inveſtitures. Their continuance till towards* M. CC. *when Inſtitution (as it is at this day) upon Preſentation grew common. How Appropriations were in thoſe times made. The ancient Epiſcopal right to Tithes, eſpecially in* Germany, *and the* Northern *parts. How Monks juſtified their poſſeſſion of Tithes and Pariſh-Churches. The right of Tithes generally denied in* Turingia, *to the Archbiſhop of* Mentz.

IV. *Of*

IV. *Of* Infeodations *of Tythes into Lay-hands, both from the Clergie and Laity; and of their Original.*

V. *Of Exemptions granted by the Pope.* Templars *and* Hoſpitalars *accounted no part of the Clergie.*

VI. *The general Opinion was, that they are due* Jure Divino*: But this, indifferently thought on, ſeems to have denoted rather* Eccleſiaſtique *or* Poſitive *Law (by the Doctrine and Practice of the Clergie) than Divine Moral Law.*

VII. *Laws Imperial, and Canons Synodal and Pontificial, for the payment of Tenths. The groſs Errour of ſome that miſtake* Nona *and* Decima *in the Capitularies. The firſt General Council that mentions Tythes.*

Of the time from M. CC. *or near thereabouts, till this day.*

CAP. VII.

I. *The Canons of General Councils, and Decretals, for Parochial Right in Tythes (not formerly otherwiſe conveyed) which now became more eſtabliſhed.*

II. *The Opinion of the Canoniſts, in the Queſtion of what Immediate Law Tythes are due by, is, that they are payable* Jure Divino.

III. *How the ſame Queſtion is determined by the Opinion of the Schoolmen.*

IV. *Of thoſe that held them Meer Alms.*

V. *The* Opinion *in* Divinity, *that concludes them due* Jure Divino. *With a Determination of the University of* Oxford *touching Personal Tythes.*

VI. Laws, Customs, *and* Practice *of* France, *in exaction of them. Of their* feudal Tithes *at this day.*

VII. Laws, Customs, *and* Practice *in* Spain, *touching the general payment of Tythes. Tythes there, in Lay-mens hands.*

VIII. Customs *and* Infeudations *in* Italy; *Payment in* Venice; *in* Germany: *Of the* Hungarians, Polacks, Swethians, *and others, touching the Duty and possession of Tythes.*

IX. *Of Tythes in* Scotland. *With an Example of an Appropriation of Churches and Tythes there, by* Robert de Brus. *And something of Tythes in* Ireland.

CAP. VIII.

The Laws *of* England *made in the* Saxon mycel ȝynoðeȝ *or* ꝑitenagemoteȝ *in* Parliaments, *and in the* Councils *here held either* National *or* Provincial, *or by the* Pope, *for the due payment or discharge of Tythes in this Kingdom.* Petitions *or* Bills *in* Parliament *touching them, are inserted, all in their course of time.*

CAP.

CAP. IX.

I. *Of* Parishes *in the Primitive Church of the* Britons.

II. Parishes *in the Primitive Church of the* English Saxons: *First limited only in regard of the* Ministers Function, *not of* Parochial Profits: *All the* profits of every whole Diocese, *first made a* common Treasure *to be disposed of by the Bishop and his Clergie, of the same Diocese.* Residence *of the Bishop and Clergie in those times. The* great regard *then had to every* Clergy-man.

III. *Of* Division of our Parishes: *Whether* Honorius *Archbishop of* Canterbury *first divided them.* Parochia *or* Parœcia *diversly taken.*

IV. Lay-Foundations of Parish-Churches; *from whence chiefly came* Parochial limits *in regard of the Profits receiv'd to the singular use of the Incumbents.* Limitation of Tythes *by* King Edgar *to the* Mother Parish-Church *or* Monastery. Monasteries *preferr'd before other* Churches *for burial.* Mortuaries. Mortpe: a third part of Tythes (*according to* King Edgar's *Law*) *must be given to a new-built Church that had right of* Sepulture *by the Founder.* Sepultura *and* Baptisterium. Capella Parochialis: *A Parish commanded to be made (out of another that was too large) by the Pope: One Parish joyned to another by the King.*

CAP. X.

I. *The Practice of Tithing. Of King* Cedwalla's *Tithing, being no Christian: The Custom of the* German-Saxons, *in sacrificing their* tenth *Captive to* Neptune. Decima *used for a less part also in ancient Monuments.*

II. *The Practice of Tything in the Christian times of our Ancestors: The Tale of* Augustin *and the Lord of* Cometon *touching non-payment of them: The Tythe of every dying Bishops substance to be given to the poor, by an old Provincial Synod. Tythes how mentioned in* Domesday. *Testimonies of payment of them.* Henry *the Third's Grant of the payment of Tythe of Hay and Mills out of all his Demesnes. The beginning of Parochial Payment of Tythes in common and established practice in* England. *How that common Assertion, that every man might have disposed his Tythes at his pleasure, before the Council of* Lateran, *is true and to be understood.*

CAP. XI.

I. *Arbitrary Consecrations of Tythes (before about the time of the most known Council of* Lateran) *by conveyance from the Owner of all or part to any Church or Monastery at his pleasure, in Examples selected out of Monuments of infallible credit.*

II. *A Writ in the Register intelligible onely from*

from those Arbitrary Consecrations: A like Example to it out of the Book of Ofney.

III. *The Liberty of the Baronage anciently challenged to build Churches in their Territories. Parochial Right to Tythes setled in Practice.*

IV. *Of Tythes of encrease in Lands not limited to any Parish. How by the Common Law they are to be disposed of.*

CAP. XII.

I. *Appropriations and Collations of Tythes with Churches. The Corporations to which the Appropriations were made, presented, for the most part, Vicars. Thence the most of perpetual Vicarages.*

II. *How Churches and Tythes by Appropriations were anciently conveyed from Lay-Patrons. The use of Investitures, practised by Lay-Patrons.*

III. *Grants of Rents or Annuities by Patrons only, out of their Churches. Of the Bishops assent. More of Investitures. A Writ to the Arch-Deacon anciently sometime sent upon Recovery of a Presentment.*

IV. *Of hereditary Succession in Churches.*

V. Laps *upon default of Presentation grounded upon the General Council of* Lateran, *held in* 25. Hen. 2. *What* Præsentare ad Eccleſiam *is originally.* Donatio Eccleſiæ.

CAP.

CAP. XIII.

I. Infeodations *here into Lay-hands ſince the Statutes of Diſſolutions. Of* Infeodations *before that time in* England: *Somewhat more of the Original of Lay-mens* practice *in* arbitrary Conſecrations *or* Infeodations.

II. Exemptions *or diſcharges of Payment originally by Priviledges, Preſcriptions, Unity, Grants, or Compoſitions, and by the Statutes of Diſſolutions.*

CAP. XIV.

I. *The Juriſdiction of* Eccleſiaſtick Cauſes, *in the* Saxon *times, exerciſed by the* Shrife *and the* Biſhop *in the* County Court: *And among them that of Tithes alſo was then to have been there determined. The* Biſhops Conſiſtory *ſevered from the* County Court *by* William *the firſt.*

II. *After the* Normans, *Original ſuits for Tythes were aſwel in the* Temporal Courts *as in the* Spiritual: *And that continued till* Henry *the ſecond, or about King* John.

III. *Of the time ſince about King* John *or* Henry *the ſecond. Of the* Indicavit *and the* Writ of right of Advowſon of Tythes. *What the Law was in an* Indicavit *before that Statute of* Weſtminſt. 2. *A touch of ancient* Prohibitions, De non Decimando.

IV.

IV. *Writs of* Scire facias *for* Tythes. Enqueſts *taken upon Commiſſion to enquire of the right of* Tythes.

V. *Fines levied of Tythes* (*in the time of* Richard *the firſt*, *of King* John, *and* Henry *the third*) *upon Writs of* right of Advowſon.

VI. Scire facias *by the* Patentees *againſt the pernor of Tythes granted by the King.*

VII. *Command of payment by the Kings Writ. And of Tythes in Foreſts. Tryal of the right of Tythes incident in ſome Iſſues.*

THE

The *HISTORY* Of TYTHES.

Of Tithes *before the Law.*

CAP. I.

I. Melchizedek *had Tithes only of the Spoils of War given him by* Abraham. Ἀκροθίνια *denotes Spoils of War, and perhaps also Profits taken from the ground, or* Ruta cæsa.

II. Jacobs *Vow and payment of Tithes. Both* Abraham *and* Jacob *were Priests when they paid Tithes. In whom the Priest-hood was before the Law.*

III. *Whether any certain Quantity were observed in the Offerings of* Cain *and* Abel.

IV. *A Cabalistick Operation in numbers by which Tithes and the First-Fruits, offered by* Abel, *might have a mystical identity. Such operations were amongst old Christians also, but meerly vain.*

I. ABraham, in his return from redeeming his Nephew *Lot* with his *Substance*, and *all the Substance* of *Sodom* and *Gomorrah*, was blessed by *Melchizedek* King of *Salem* and Priest of the most high God, *and gave him Tithe of all.* So is the holy Writ. But what that *all* was, is not clearly agreed upon; it is taken to be מכל אשר לו *miccool aghsher lo*, that is, *of all that he had*, as the ordinary Gloss of *Salomon Jarchi* there interprets; and ex-

 pressly

preſly ſo are the *Syriack* and *Arabick Tranſlations* of the New * Teſtament, where this is ſpoken of. But it is hard to conceive it of any other *all that he had*, than *all the Subſtance*, or *all the Spoiles* that he had by that expedition. The holy Context ſo points it out. So did the old *Jews* underſtand it; otherwiſe never had ſo great and worthy an Autor, (a) *Flavius Joſephus*, a *Jew*, confidently written the Tithe there given to be δεκάτην τῶν λείας, *the Tithe of what was gotten by the war*. He knew a received Opinion in his Nation to be ſo, or elſe had not been ſo forward to deliver it. The ſame is confirmed by the *Targum*, attributed to *Jonathan Ben-Uziel*, there; *of all*, is interpreted by מכל מה דאתיב *miccal mah datheib*, that is, *of all that he br ought back*. And, to free it from doubt, the holy Autor of the Epiſtle to the *Ebrews* firſt uſeing the Text of *Geneſis* in thoſe words, δεκάτην ἐκ πάντων, *the Tithe of all*, after a few words interpoſed, explains it by δεκάτην ἐκ τῶν ἀκροθινίων, *the Tithe of the ſpoils*; as if he had ſaid, δεκάτην ἐκ τῶν πάντων ἀκροθινίων, *the Tithe of all the ſpoils*. In that place, the *Syriack* hath *Tithe* (b) *and firſt Fruits*, and the *Arabick*, *tithe* (c) *and Alms*. Indeed ἀκροθίνια ſignifieth alſo *firſt Fruits*, or the *chiefeſt parts*, ſacred to the Gods among the Gentiles; and ἐκ τῶν ἀκροθινίων hath, in that ſenſe, been turn'd there, by *de præcipuis*, in the vulgar. But thoſe *Eaſtern* Tranſlations ſuppoſe, it ſeems, as if the *Greek* ſhould be δεκάτην ἐκ ἀκροθινίων. But we muſt not take the old Text to have been ſo different from what we now read. And for that, *de Præcipuis*, in the Vulgar; can it be thought that he gave Tithe of the beſt parts

? *Ep. ad Heb.* 7. 2

a *Archæolog. a. cap.* 12.

(b) וישיתהא ואלזכאתא *Eleemoſyna*.

(c) זכאת *ſæpius denotat in* Alcorano, *quod monuit vir tam humanitate quam doctrina ſingulari* Guil. Bedwellus *linguarum imprimis Orientalium callentiſſimus*. Vide Azoar. 32. 34. & 92.

parts only? How ſtands that with giving Title of all It muſt therefore be interpreted *of the ſpoiles*. So St. *Chryſoſtom* (*d*) underſtands the Text. ἀκροθίνια, ſays he, τὰ λάφυρα λέγεται. that is, *the ſpoiles are called* ἀκροθίνια, whereof, as he notes alſo, *Abraham* made *Melchizedek* a Partaker, by ſo giving him the firſt fruits of his martial performance. Accordingly doth *Sulpitius* (*e*) *Severus*, in his Story of *Abraham*, call his Tenth *decimam prædæ*, which is alſo expreſly juſtified by S. *Hierom*, often ſtiling it *decimas ſpoliorum, prædæ & victoriæ*; who well withal confeſſes, that, were it not for the holy expoſition in that Epiſtle to the *Hebrews*, the relation in *Geneſis* might as well be underſtood, that, on the other ſide, *Melchizedek*, as a bounteous Anceſtor, had given to *Abraham* the tenth part of his Eſtate; the Text indeed being both in the *Ebrew* and *Septuagints* ſo, that, no name immediately preceding the mention of the gift, it ſufficiently thence appears not who was the Giver. *Utrunque* (ſays (*f*) S. Hierom) *intelligi poteſt & juxta Ebraicum, & juxta Septuaginta interpretes, quod & ipſe acceperit decimas ſpoliorum, & Abrahæ dederit decimas ſubſtantiæ ſuæ; quanquam Apoſtolus in Epiſtola ſua ad Ebræos apertiſſime definiat, non Abraham ſuſcepiſti a Melchizedek decimas divitiarum ejus, ſed de ſpoliis hoſtium partem accepiſſe Pontificem.* Neither is this Interpretation of ἀκροθίνια diſſonant from ancient uſe among the *Greeks*. Indeed it elſewhere rarely occurres in this ſenſe; but clearly in that old proverb, ἀκροθίνια Πυγμαῖα Κολοσσῷ ἐφαρμόζειν, *To put an Armor taken from a Pigmy, on a* Coloſſus *his back*, it de-

d In Epiſt. ad Ebræos. hom. 16.

e Hiſtor. l.

f In Ep. ad Ebræos, tom. 4

notes nothing else but σκῦλα, (g) or λάφυρα, that is, *spoiles taken from dead or living*, according whereto both *Hesychius* and *Suidas* have expounded it. From which sense, I guess, it hath also been brought to signifie those kind of profits, taken (as spoiles) from the Land, which the *Civilians* call *Ruta cæsa*, that is, (h) Trees cut down, Coles, Sand or Chalk, digged up, or the like, which we style things *severed from the free-hold*, and turn'd into Chattels, according as the Greek Lawyers (i) named them τὰ ἀπὸ τῆς λαμβανομένα, *Things that were taken from the ground*, or *free-hold*, for so it agrees with our phrase. That which first bred in me this conjecture, was a corrupted place in an old (k) Glossary, where ἀκροστόλια is interpreted by *Rutitilia*; what can *Rutitilia* there signifie? I conceiv'd it to be deprav'd for *Ruta cæsa*, which is often read as one word, and no man can deny but that *Ruta cæsa* may easily be stiled *spolia* or *exuviæ villæ*, and by an easie metaphor be expressed in a word that signifies spoiles of War; many corruptions much further off from the true Originals, are obvious in the same Glossary.

II. The next passage of Tithes is in *Jacob's* Vow. *This stone*, saith (l) he, *which I have set up as a Pillar, shall be Gods house, and all that thou shalt give me, I will* Tithe *and give the* Tenth *to thee*, which (*Josephus* says) upon his return, being after XX. years, he (m) performed, offering the Tithe of all his substance, or δεκάτην παντὸς κτήματος, *The Tith of all he had gotten*. Into whose hands he gave his Tithes, appears not. But the chiefest Priest of that time was his

g Philostrat. in vit. Sophist. in Nicete. Unde emendes oportet depravatos Suidæ codices in ἀκροθίνια.

h Ulpian. ff. de actioni. empt. & vendit. l. 17. Sect. 6.

i Vet. Glossa verb. junio in fœn.

k Glossar. vett. Græcolat. edit. ab H. Stephano.

l Gen. 28. 22.

m Jos. Archaeolog. c. 18.

his Father *Iſaac*. For before *Aaron*, the *Jews* ſay, the Prieſthood was wholly annext to the firſt-born of Families. Which (*n*) agrees well with the ſanctifying of the firſt-born, commanded in *Egypt*. Hence it comes that *Melchizedek* is commonly reputed to be *Sem*, the eldeſt Son of *Noah* (for ſo in this declaration he may be clearly admitted, although no ſmall Controverſie be whether he or *Japheth* were the eldeſt) and *Noah*, *Abraham*, and *Job*, and the like are accounted, (*o*) by this right, Prieſts of that time; and as *Abraham*, being in a right line X. degrees from *Sem*, gave Tithes to him being the eldeſt Anceſtor of the houſe, or firſt-born, and ſo a Prieſt in *Salem*; ſo it may be thought, that *Jacob* paid his vow into the hands of *Iſaac* the chief of the Family then living as a firſt-born, and a Prieſt alſo. But remember withal, that *Jacob*, although the younger Son, is reputed alſo to have had this Prieſthood by the ſale made to him of his elder Brother *Eſau*'s Birth right, to which a Prieſthood was incident. So was the ancient opinion of the *Jews*, as St. *Hierom* (*p*) relates it. *Simul & hoc tradunt*, ſays he, *quod uſq; ad ſacerdotium Aaron omnes primo-geniti, ex ſtirpe Noe, fuerint ſacerdotes & Deo victimas immolarint, & hac eſſe primogenita quæ Eſau fratri ſuo vendiderit Jacob.* And expreſs mention is of his exerciſing this holy function in (*q*) Sacrifices, during his Fathers life. For, having gotten the right of primogeniture, and being long ſevered from his Fathers houſe, and having a diſtinct Family and Poſterity in his own power, notwithſtanding his Father were then living, yet had he that kind

n Exod. 13. 1.

o Origen lib. 1. in Job.

p In Epiſt. ad Evagrium.

q Gen. 1. 31. 54.

of Priesthood in him. For if this holy right came not to any till he had been the eldest of the Family as well as the first-born, how could *Abraham* be accounted for a Priest? as expresly *Origen* and others reckon him; which the form of his offering his Son *Isaac* also justifies. He was never both first born and eldest of his Family. For *Sem* lived after him about XL. years, and kept that Title from him; but a first-born he was, and divided also from his Fathers Household at the time of his Tithes given him; whence observe by the way, that both *Abraham* and *Jacob*, according to this right of that time, must be Priests also when they paid these Tithes. No other express mention is of Tithes before *Moses* his time; unless, with the *Jews*, you dream that the *Levitical Law* was written before the Creation.

III. Let the Ancients seem to have observed a respect had to the quantity of what was, as a part of the yearly encrease, consecrated in those times to the Lord, and that even in the first memory of Sacrifice. *Cain*'s Offering was not regarded, they (a) say because, *quod offerebat non recte dividebat*, he did not well divide what he offered: which seems to design out a defect in the quantity, as if specially some *quota pars* were at that time required. But this reason was from no other cause than the mistranslation of the Text in the story of *Cain*. For, where the (b) Original is thus, *Why is thy Countenance cast down? if thou do well, is there no remission? if thou do ill, sin lyeth at the door*; they read it far otherwise, and thus; *quoniam, nonne, si recte quidem offeras; non recte*

a Tertull. lib. adverſ. Iudæos. alii item sæpius.

b Gen. 4. 7.

cte autem divid.us, peccaſti? quieſce: which is all one with the Septuagints Text, that in the Primitive times was chiefly in uſe, ἐὰν ὀρθῶς, ſay they there, προσενέγκῃς, ὀρθῶς δὲ μὴ διέλῃς ἥμαρτες; ἡσύχασον. *If thou offer well, but divideſt not well, haſt thou not ſinned? be quiet.* And this paſſage of *well-dividing*, did *Julian*, that witty *Apoſtata*, take for a ſpecial queſtion to oppoſe a Biſhop in his time. But moſt agreeable to that Tranſlation, and not diſſonant from the Original, is, that he gave with a grudging mind, and (*c*) not of the beſt and firſt of his fruit, as he ought to have done, and as the Heathen ever did, or by their Pontifical Laws ought to have done in their *Prameſſum*, that is, the firſt Fruits of their Corn, or their *Calpar* or *vinum inferium*, which was the richeſt of their Wine. And it is expreſly ſaid, that *Abel* brought of his firſt Fruits, but *Cain* only of his Fruit of the ground; the one giving the Lord a portion of the beſt, the other not regarding of what time, what worth it were, ſo it were of his Fruit. So here is not any *quota pars*, or certain quantity noted, but (*d*) τὴν προαίρεσιν γνώμην, or the mind only of him that offered, and the quality of the Oblation.

(*c*) Cyrill. adverſ. Iulian. lib. 10.

(*d*) Ita D. Chryſ. in Gen. λογ. 28. D. Ambroſ. l. 1. de Cain & Abel. c. 7. & l. 2. c. 6. vide Ep. ad Hebraos, c. 11. 4.

IV. Yet too, if ſome *Cabaliſtick and Doting Curioſities* were of value, there might be ſome Identity, or at leaſt ſome Affinity between the firſt Fruits of *Abel*, and the tenth part. The firſt Fruits are in the Text called בכורות *becoroth*, the Tithe מעשר *maighſher*. Now the *Jews* make great and hidden Correſpondencies betwixt things denoted by any two words, whoſe ſeveral numbers made out of their Letters, are

are equal; their Letters, as the *Greek*, being all numeral; and two kinds of this *Arithmetick* they have: the one in greater numbers, which is frequent with them; the other in leſs. Their practice (*e*) in the ſecond kind is thus; Out of every Centenary and Decad of the Letters of a word they take a Unity, and add theſe to the reſt, that is, the leſs numbers; by which operation, if two words agree in ſum, they think forſooth ſome great Myſtery, of mutual relation, betwixt the things ſignified, is diſcovered. Thoſe two of the firſt-fruits and Tithes, by this way, are equal. For example. Diſpoſe the Letters and their Numbers thus.

e Archangel. in Dogmat. Cabaliſtic. c. 19.

כ ב ד ר ת
400.6.200.20.2.
מ ע ש ר
200.300.70.40.

in the firſt, out of 400. 200. and 20. take 4. 2. and 2. that is, an Unity out of every Centenary and Decad; and the ſum is 8. which, added to the leſs numbers make 16. Likewiſe in the ſecond, out of 200. 300. 70. and 40. take 2. 3. 7. and 4. (there being no leſs numbers) and you have the ſame ſum as in the other, that is 16. But take this only as a taſt of ſuch impious liberty as theſe kind of Vanities give (amongſt the *Jews*) to make any thing have myſtical reference to every thing. Yet neither were Chriſtians without the very like in the primitive times. Witneſs the *Marcoſian* and *Colabarſian* Hereſies in their ω. and ω. made the ſame with ιησους, and divers other

other like by agreement in number. They indeed went so far in this ridiculous kind, that they determined[1] *totam plenitudinem & perfectionem veritatis in istis literis (numeralibus) esse dispositam*; witness the *Basilidians* god, *Abraxas*. Nay some Fathers of those times so much regarded this arithmetical way of search, that in this very story of *Abrahams* success with his company of 318. and of his recovering the *goods*, the *women*, and *people*, they deliver that the mystery [2] of our Lord crucified, was denoted. That number 318. is in Greek thus, τιη. For they reckon'd out of Greek, as the Jews out of Hebrew. In the 300 figured by τ. they suppos'd the Cross foretold; as otherwise it is usually observed upon that of *Ezechiel*, cap. IX. 4. And ιη they took for the two first letters of our Saviours name Ἰησοῦς or *Jesus*. Whereupon *Prudentius* [3] relating the victory, says, we should be very rich, as *Abraham* in his spoiles,

[1] *Tertull. l. de Hæres.* id genus plurima habes pud *Epiphanium*, *Tom.* 3 *l. c.* 1. & *Irenæum l.* 1. *c.* 10.

[2] *Clem. Alex. Stremot.* 9.

[3] *In Præfat.* ὁ ψυχομαχία.

Si quid trecenti, bis novenis additis,
Possint, figura noverimus mystica.

where, for *bis* some Copies, without sense, have *his*; but who sees not the vanity of such mysteries? Although too, the unlimited liberty of our times, in so confidently daring to tell us the mystery of the *number* of the [4] *Beast*, would make a man give the more regard to these collections out of numbers. Every great Clerk, that deals with it, hath, for the most part, his several word to make up *666*. Some for us; some against us. And no doubt is (that one old one may be added) but he, which, long before *Luther*,

[4] *Apoc. c.* 13. 18.

ther, made Sir *John Old-Caſtes* name to fulfil that propheſie, thought he had been as near truth as the beſt of them, Out of JOHN OLD-CASTEL in numerals [1] he makes 701. And thence ſubtracts the year of his age, wherein he ſo charitably and ſtoutly took part with *Lollards*, and was condemned for hereſie, that is, 35. and the reſt being *666.* notes him out (ſays he) with the Character of the Beaſt. *riſum teneatis*! this in moſt miſerable verſe he expreſſes. Nor hath this dream of his place here otherwiſe, than as an old pattern of triffling boldneſs uſed in the later Arithmetick of many on that paſſage in S. *John:* in whom are [2] *tot Sacramenta, quot verba*; and of whom the anſwer given by that great Doctor, *Calvin*, was as judicious as modeſt. He, being demanded his opinion, what he thought of the Revelation, [3] anſwered ingenuouſly, *he knew not at all what ſo obſcure a writer meant.* He might beſt have ſpoken it on this particular of the number; to which, found by arbitrary collection, who ever gives much credit, might unhappily perchance be induced to believe ſome mutual reſpect twixt *Abels* Offering, and *Abrahams* Tithes.

[1] *Thomas Elmham Prior. Lenton. in Chronic. Hen. 5.* in Bib. Bodleiana.

[2] *Hieron. Epiſt. ad Paulinum.*

[3] *Bodin. Method. hiſt. cap. 7.*

How, *among* the Jews, *Tithes* were paid or *thought due*,

CAP. II.

I. First-fruits, *and* Heave-offering (*that is*, ſixtieth parts *at leaſt*) *firſt were paid out of the* fruits *of the earth.*

II. *The*

II. *The* first Tithe *was paid to the* Levites (*who out of that paid a Tithe to the* Priests) *and then the* second tithe.

III. *The error of them that make a* third *Tithe. The* second *Tithe of every* third year *spent on the* poor. *what they take* the year of *Tithing to signifie in* Deuteronomy.

IV. *Above a* sixt part *was yearly paid by the husbandman: but* no *Tithe by him to the* Priests.

V. *How their* Cattel *were tithed.*

VI. *A* discontinuance of payment *among them. Honester* Over-seers *chosen for the true payment.* Demai, *that is, things doubtful, whether Tithes were paid of them or no. Passages in* Epiphanius and S Chrysostome, *of their Tithing.*

VII. *Their* Tithing of every herb, *what their* Canonists *hold* titheable.

VIII. *Their* Law of Tithing (*after the destruction of their second Temple*) ceased, *by the doctrine of their* Canonists, *which teaches also that they are not to pay elsewhere then in the* Land *of* Israel, *and some* adjacent Countries. Presbyteratus Judæorum totius Angliæ *anciently granted by the* English *Kings.*

I. THe yearly increase being either *fruits of the ground* or *Cattle*; In the Law, of *fruits of the ground*, first, the first of the forwardest [1] were offered to the Priest in ears of *wheat* and *Barley*, *Figs*, *Grapes*, *Olives*, *Pomegranats* and *Dates*. And, of these seven only, the *first fruits* [2] were paid

[1] *Exod.* 23.19. *Lev* 23.10. *Num.* 15.20.

[2] *In Talmud in Seder Zeraim, Massichoth Bikurim*, atque inde recentiores eorum jurisperiti.

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paid in what quantity the owner would: next, the *Therumah*, or *heave-Offering*, or *first-fruits* of *Corn*, *Wine*, *Oyl*, *Fleece*, and the like, were also [1] given to the Priests. But it being not determined by *Moses* of what quantity this *heave-Offering* should be, the Jews anciently assest it to be enough at the [2] *fiftieth part*; but so, that no necessity was that every one should pay so much. He that paid a *sixtieth* part was discharged; and many of the better devotion offered a *fortieth*. The *fiftieth* part they call תרומח כנוגית, that is, an *indifferent* or *competent Therumah*, or *heave-offering*, which they named also תרומח גדולח, that is, the *great heave-Offering*: the *fortieth* they stile תרומח עין יפח, that is, a *Therumah of a fair eye*, or liberally given; and the *sixtieth* תרומח עין רעח, that is, a *Therumah of an* [3] *ill eye*, or a niggards gift. But you may observe too, that this, which they called a niggards gift, was not beneath the quantity of the *Therumah* appointed in [4] *Ezekiel*, where the words are; *This is the* Therumah *that ye shall offer*; *the sixt part of an* Ephah *of an* Homer *of wheat*, *and ye shall give the sixt part of an* Ephah *of an* Homer *of Barly*. It is the same as if he had said, *ye shall offer a* Therumah *of the sixtieth part of every Homer*. For an Ephah (being the same measure with a Bath; that is, near our common Bushel) was the tenth part of an Homer; therefore the sixt part of an Ephah, the sixtieth of an Homer. After the *Therumahs* offerd to the Priests (every kind being given in season) out of the rest were taken the *Tithes*, which are best divided into the *first* and *second Tithes*.

[1] *Deut.* 18.4.

[2] *Salomon Jarchi ad dict. locum*, cæteri Jurisp. & *D. Hieronymus ad Ezek.c.*45. & *Cassianus collat.*21.*c.*3.

[3] Hanc loquendi formulam habes apud *D. Matthæum*, *c.*20. 15.

[4] *Ezek.c.*45. 13. & 11.

II. The

II. The first Tith was [1] paid, out of the remainder, to the Levites at *Jerusalem*: by that name it is every-where [2] titled, and out of this *Tenth* received by the Levites, another *Tenth* they [3] paid to the Priests, as a heave-Offering out of their Tenth, which they called also the *Tithe of the Tithe*. For the Priests received no Tithes of the Husbandmen: only the Levites received Tenths from them, and paid their Tenth to the Priests; being (as [4] S. *Hierome* says) *tanto illis minores, quanto ipsi majores populo.* So Clergy-men, by that example, have paid Tithes to the Pope; and so by a [5] late Law they do in this Kingdome to the Crown. Neither might the Levites spend, to their own use, any part of theirs, till this *Tenth of the Tenth* were paid. Afterwards it might be imployed for their maintenance generally wheresoever. This first *Tenth* paid, the nine parts remaining, were [6] accounted חולין, that is, *prophane*, or for common use; yet not to be spent by the Professor till he had taken out of those nine [7] *another Tithe*, which he was, the first 2 years, to carry to *Jerusalem* in kind; or if the way were too far, to turn it into money (adding a fift[8] part of the value: for to this Tithe do the Jews apply that of *Levit.* XXVII. 30, and 31.) and spend it there at the Temple in Feasts, which were near like to the old Christians *Agapæ* or *Love-days*. And every third year the same he was to spend upon the poor and Levites within his own gates. After those Tenths thus disposed of, the remnant of that years increase they calld חולין מתוחנין, that is, as if you should say, *every way prepared* or

[1] *Num.* 18. 21.
[2] *Judaipassim, & Ioseph Arch. l.* 4. *c.* 7. *Tobit, c.* 1. *com.* 7.
[3] *Num.* 18. 28.
[4] *Epist. ad Fabiolam de vestis Sacerdotali.*
[5] *Stat.* 26 *Hen.* 8. *c.* 3.
[6] *Ben. Maimon. in Jad. Chazeka. part.* 3. *mas sec.* 1. *de Decimis c.* 8.
[7] *Deut.* 14. 23.
[8] *Iachi ad eund. locum.*

fit for common use, or *absolutely Lay-Chattels*; the first nine parts being so only respectively. This other Tithe they stiled their *second Tithe*, or Tithe for Feasts, that is, [1] δευτέρα περὶ ἑυωχίας.

[1] *Joseph. lib. 41. Arch. c. 7.*

[2] *Tobit. 1. 7.*

III. Some make a *third Tithe*, as [2] *Tobit*; expressly using the name of δευτέρα τιθὴ, *a third Tithe*: καὶ τὴν τρίτην (says he) ἐδίδουν οἷς καθῆκεν. *And the third Tithe I have given to whom it was meet.* But he means only the *Tithe of the third year*; that is, the Tithe which every third year (after the *first Tithe* paid) was to be laid up by the husbandman in his own gates for the *Levite that is within his gates, the stranger, the fatherless, and the widow.* Which [3] *Josephus* also names, τρίτην καθ' ἑκάστου τρίτου, *a third Tithe to be bestowed every third year*; and this the *Rabbins* call מעשר עני, that is, the *poor mans Tithe.* And it is also titled a *third*; but falls better under the *second* of our Division, and need not to be made a *third*, nor is it. Nor by the great [4] *Scaligers* leave, can it be accounted the *first*, nor doth it at all answer to that. For the first Tithe was paid every year, saving the Sabbatical; otherwise, whence should the Levites and Priests have their livelode of that year? and so expressly affirm the great [5] Doctors of the Jews; and that according to their Talmud or Canon-Law; that the *first year* first they paid the *first Tithe*, then the *second*, so in the *second year*; and that in the *third year*, after the first Tithe paid, they paid the מעשר עני, that is, the *poor mans Tithe*; and that year, מעשר שני יבטל, that is, the *second ceased*, or *was not paid.* [6] *Ben-Maimons* words are, that in the *third* and *sixth years* the

[3] *Archæol 4. c. 7.*

[4] *Diatrib. de decimis Judæorum.*

[5] *Mos. Mikotzi in Mitzwoth. c. 135. Ben Kattann. prac. 473. alii.*

[6] *In Misnah Torah part. 3. de decima secundæ. cap. 1.*

the poor mans Tithe was חלף מעשר שני, that is, *instead of the second Tithe*. Neither can that in *Tobit*, touching the payment of the second Tithe *every year* (wherein both the *Greek* and *Hebrew*, of him agree, although in other things they much differ) be otherwise well understood, than for *every of the two years*, unless that text be wholly contrary to the known practice of the Jews Canons. So then every third year the Levites at the Temple mist their second Tithe for their Feasts and Love-days; the same being charitably, and by divine Ordinance, spent at home in the gates of the husbandman. Neither doth the *second* and this *poor mans Tithe* differ in substance, but only in circumstance. The division of both, is exactly the same, and the persons appointed for the eating, are upon the matter so too. For as the Levites, ministring in their course at the Temple, were to have part in the Feasts made of the second; so were the Levites and the poor in the countrey entertained with this of the third year. The place, where the bestowing was, makes their difference; substantially they are the same, and fitly go under one name. Which is fully to me confirmed by the *Septuagints* translation of that place in *Deuteronomy*, which we [3] read according to the *Hebrew* thus: *When thou hast made an end of Tithing, all the Tithe of thine encrease in the third year (which is the year of Tithing) thou shalt give to the Levites, strangers, fatherless, and the widow, that they may eat within thy gates, and be filled.* They there translate it, Ἐὰν δὲ συντελέσῃς ἀποδεκατῶσαι πᾶν τὰ ἐπιδέκατον τῶν γεννημάτων τῆς γῆς σοῦ ἐν τῷ ἔτει τῷ τρίτῳ τὸ δεύτερον ὅπι-

[3] Deut. 26. 12.

ἐπιδεκάτην δώσεις τῷ Λευίτῃ καὶ τῷ προσηλύτῳ· and that is, *when thou haſt ended the Tithing of all the fruits of thy ground, in the third year, the ſecond Tithe thou ſhalt give to the Levit, and the ſtranger, &c.* as in the common text. Where plainly, you ſee, the poor mans Tithe is expreſly called the ſecond Tithe, which juſtifies our Diviſion. Doubtleſs, they there inſtead of שנת חמעשר *ſhenath hamaigſher*, that is, *the year of Tithing* (as the text is) found in their *Hebrew* Copies, שניית חמעשר *ſhenith hamaigſher*, which they took for the *ſecond Tithes*, knowing that in truth that place meant no other. Divers paſſages in their tranſlations are upon ſuch differences; and they oftentimes give thence a kind of commentary as well as a tranſlation. Neither is it ill context, that *ſhenith* of the fœminin gender ſhould be joynd to *maigſher* of the maſculin. It is not without frequent example in holy Writ. That their word ἐπιδέκατον (not very uſual for Tithe) was moſt proper, and hath no worſe original then [a] *Athens* it ſelf, where by that name the Tenth of Mulcts and Goods confiſcat, was ſacred to *Minerva*. But this place of the *year of Tithing*, is interpreted by the common Gloſs of the Jews *by the year of one Tithe*, as if the text had been שנת חמעשר אחר, that is, *the year of one Tithe*, or *of paying only one Tithe*. Which in ſubſtance exactly agrees alſo with the meaning of the *Septuagint*. For in the third year, ſays *Iarchi*, there was only one Tith paid of the two commonly ſpoken of; that is of the firſt and ſecond. The firſt was only paid to the *Levites*. The ſecond, by that name, was not: but the poor

[a] *Xenoph. hiſt. Grac. 2.*

[b] *Solomon Iarchi ad h. loc. Deut.*

poor mans Tithe inſtead of it: and he ſo expounds it, that he takes the mention of the *Levites* there to deſign out the firſt Tithe of that third year paid at *Jeruſalem*, which plainly alſo confirmes what is here before declared. The *ſecond* then, and the *Tithe of the third year* are the ſame in ſubſtance. The payment of all appears in this example.

IV. After the firſt-fruits paid in ears, admit

The increaſe 6000. Ephahs; the *heave-Offering* at leaſt muſt be 100.

The remainder 5900. The *firſt Tithe*, 590. and out of this 59. to the Prieſts.

The remainder 5310. Out of this, the *ſecond Tithe*, 531. which every two years the *Levits* had at *Jeruſalem*, and every third year was ſpent in the gates of the husbandmen.

The reſt being 4779. was kept for the husbandman.

So that of 6000. Ephahs, the Levits and poor had in all 1063. whole to themſelves, the Prieſts 159. and the husbandman only 4779. He yearly thus paid more then a *ſixt part of his increaſe*, beſide firſt-fruits; almoſt a fift. Many of no ſmall name, groſly ſlip in reckoning and dividing theſe kinds of their Tithes. But this here delivered, is from the holy text and the *Jewiſh* Lawyers.

V. Of their *Cattel*; the *firſt-born* were [1] the Lords, paid to the Prieſt of clean beaſts in kind; of unclean in mony, with a fift part added. Of the in-

[1] *Exod.* 13. 2.

crease of them, one Tithe only was paid, and that to the Levites. *Every Tithe of Bullock and of Sheep, of all that goeth under the Rod, the Tenth shall be holy to the Lord*, saith holy [1] Writ. Thence at the Tithing they used to shut the Lambs (for example) in a sheep-cote, where the straitness of the door might permit but one at once to come out. Then, opening the door, either gently to hunt them out, or by placing the Ewes bleating near them without, so to cause them run forth one by one, while a servant standing at the door with a rod coloured with Oker, solemnly told to the Tenth; which with his rod he markt: So they understand going under the Rod: that so markt, whatever it were, male or female, worst or best, was the Tithe, and might not be changed.

[1] Levit. 27. 26, & 32.

[2] Iarchi ad Levit. cap. 27. & Rambam in Massech. de primogenitis c. 7.

VI. How the payment of these Tenths was either observed or discontinued, partly appears in holy [3] Writ, partly in their institution of more trusty Over-seers (whom they called נאמנים) for the true payment of them. For after the new dedication of the Temple by *Judas Machabæus*, until his fourth successor [4] *Joannes Hyrcanus* (being near thirty years) all duly paid their *first fruits* and *Therumahs*, but the *first* or *second Tithe* few or none justly; and that through the corruption of those Over-seers. Whereupon their great *Sanedrim*, or Court of seventy Elders (that is, the בית דין הגדול, that is, *the greatest Court*, that determined also, as a Parliament, of matters of State) enacted, that the Over-seers should be chosen of honester men; and withal, that of such things, whereof, by such corruption, or otherwise,

[3] 2 Paralip. 31. Malach. 3. & Nehem. cap. 13.

[4] Rambam de decimis, cap. 9.

otherwise, it was indifferently doubtful; whether Tithe were justly paid or no (of which kind, almost all increase, at the time of this act made, was a *heave-Offering* or *Therumah* of the Tenth of all, that is, a *hundreth part*, should be given to the Priests, and then the second Tithe at the Temple should be paid, but no first Tithe, or poor mans Tithe, was paid of any such things. These kind of goods they called דמאי *Demai*, whereof a special *Massecheth* or treatise is in the *Talmud*, in the *Seder Zeraim*. From that act of the *Sanedrim*, to the last destruction of the Temple, it seems, the Just payment of Tithes continued; and thereof testimony is (for the time near the destruction) in [1] holy Writ. But in *Tithing* and offering *Therumahs*, the Pharisees were most curious and devout; they gave perhaps *Tithe* after both the *Legal Tithes* paid, beside *fiftieth parts*, and sometime *thirtiths* for their *Therumahs*. So may be understood that of them, [2] ἀποδεκάτου ᾖ τὴν δεκάτωσιν, τὰς ἀπαρχὰς ἐδίδουν, τριακοντάδας τε καὶ πεντηκοντάδας, which you may interpret, *they tithed what was already tithed, they gave first fruits, thirtith parts, and fiftith parts.* But I dare not justify the translation. Neither do I believe, that *Epiphanius* there sufficiently understood what they did in their Tithing, nor is his meaning easily, I doubt, apprehended. The like may be, with modesty enough too, said of S. [3] *Chrysostome*, speaking of the Jewish Legal liberality to the Levites. Ἐννόησον, says he, ὅσα Ἰουδαῖοι ἐδίδοσαν, δεκάτας, ἀπαρχὰς, πάλιν δεκάτας, καὶ πάλιν ἄλλας δεκάτας καὶ πάλιν τὰς ἑτέρας τρισκαιδεκάτας καὶ τὸ σίκλον, καὶ οὐδεὶς ἔλεγε ὅτι πόλλα ἐσπούσιν. *Observe but how much the Jews gave*

[1] *Ep. ad Hebr. cap. 7. 9.*

[2] *Ephiphan. lib. 1 haref. 16.* Vide si placet *Casaubon. advers. Baron. pag. 63. & 64.*

[3] *In serm. 103.* τῶν διαφόρων, *tom. 6. p. 879. & 1. 9. in Epist. ad Philippenses, tom. 4 pag. 54.* editione Savilian.

(to their Levites and Priests) *as Tenths, first-Fruits, then Tenths again, then other Tenths, and again other thirteenths, and the* [1] *Sicle, and yet no man said they eat* (or had) *too much*. So are his words in two places of his works exactly the same; saving only that in one the variety of reading hath τρεσκαιδεκάδας for *thirteeenths*. I confess I equally am ignorant of both; neither is his enumeration consonant with what the Monuments of the Jews or the holy Text will warrant. Conjectures upon it I leave to others, some probable enough might here be brought, but I willingly abstain.

[1] Exod. 30.12.

VII. That tithing of [2] πᾶν λάχανον, every herb, which is spoken of in the Gospel, (and observed by the *Scribes* and *Pharisees*) was never commanded in Scripture, nor by their Canon-Law requisit, according to the opinion of their Doctors, who restrain the payment of Tithes to that [3] הבואתך, that is, *thy increase*, spoken of by *Moses*; and comprehend not herbs under that name. They deliver indeed that by tradition from their fathers, all things growing out of the earth, and fit for mans meat, are titheable, which their [4] Lawyers thus regularly express, כל אובל אדם הנשמר שגידוליו מז הארץ חייב בתרומות רכן במעשרות, that is, *Every thing that is kept as mans meat, and hath his growth from the earth, must pay the heave-Offering, and likewise Tithe*; Whence they make such herbs as are mans meat titheable, but all such as are not mans meat, they discharge of Tithes. And out of that rule also they except whatsoever was gleaned [5] either out of ears of

[2] Luc. 11.42. Math. 23.23.

[3] Deut. 26.12.

[4] Ramb. part. 3. tract. de Therumoth. c. 2. & Mikozi in præcept. 145.

[5] Lev. 19.9, & 10.

of Corn, or Grapes, or had out of the corners of the field left in harvest. But it seems, that for this payment of Herbs, the Pharisees were of the truer side. Our Saviour likes well their payment, and expressly says, *they ought not omit it*, which admonition of his was to them while yet the Mosaical Laws were not all expired by the *consummatum est*.

VIII. After the second Temple destroyed, and dispersion of the *Jews*, their Law of *first-fruits*, *Therumahs* and *Tithes*, with them ceased. For their Doctors determine that regularly no inhabitants, but of the land of Israel, were to pay any; although also among them be a wise exception for the lands of *Senaar*, *Moab*, *Ammon*, and *Ægypt*, because the first is near their land of *Israel*, and many *Israelites* went thither and dwelt there, and the other three are round adjoyning their land of *Israel*. But they deliver that who so of them took the profits of land mongst the *Cutheans* or *Samaritans*, their old enemies (or elsewhere in *Aram*; and so, it seems, by consequent in any other land, saving which they except) was not to pay any, touching which point many special cases are put by [1] *Rabbi Ben Maimon*. At this day by their Law they pay none, those that live in their land of Israel, for want of their Priesthood and Temple; those that live dispersed in other Countries, both for that reason, as also for the other which restrain the payment of them to *Canaan*. And herein they all agree. But the great *Joseph Scaliger* says, he askt some of them whether, if they might again build their Temple (as after the captivity they did)

[1] *In Iad. Chazeka tract. Therumah, c. 1. & Mikotzi in Præcept. 133.*

did) their Laws of Sacrifices, firſt Fruits, and Tithes would be then revived; and their anſwer was, that to build it again were to no purpoſe, becauſe they had no lawful Prieſthood, there being not one of them that can prove himſelf a Levit, though many pretend to be ſo, and ſome bear alſo the office of a kind of Prieſthood amongſt them. And (for example herein among our own Anceſtors) when the Jews lived here they had, it ſeems, one general or high Prieſt over them, uſually confirmed at leaſt, if not conſtituted, by the King, for life; as appears by Record, proving that both *Richard* the firſt and King *John* did by their Patents grant the ſame. The Copy of it being a moſt rare example and not from this purpoſe, take here tranſcribed. *Rex omnibus fidelibus ſuis, & omnibus & Judæis, & Anglis ſalutem. Sciatis nos conceſſiſſe, & præſenti Charta noſtra confirmaſſe* Jacobo *Judæo* de Londoniis *Presbytero Judæorum*, Presbyteratum omnium Judæorum totius Angliæ. *habendum & tenendum quamdiu vixerit, libere & quiete, honorifice, & integre, ita quod nemo ei ſuper hoc moleſtiam aliquam aut gravamen inferre præſumat. Quare volumus & firmiter præcipimus quod eundem* Jacobo *quoad vixerit* Presbyteratum Judæorum per totam Angliam, *garantetis, manuteneatis & pleniſſime defendatis: & ſi quis ei ſuper eo forisfacere præſumſerit, in ei ſine dilatione (ſalva nobis emenda noſtra) de forisfactura noſtra emendari faciatis, tanquam Dominico Judæo noſtro quem ſpecialiter in ſervitio noſtro retinuimus. Prohibemus etiam ne de aliquo ad ſe pertinente ponatur in placitum, niſi coram nobis aut*

aut coram Capitali Justitia nostra, sicut Carta Regis Richardi *fratris nostri testatur. Teste S. Bathoniensi Episcopo, &c. Dat. per manus H. Cantuariensis Archiepiscopi Cancellarii nostri apud Rothomagum* XXXI. *die Julii anno Regni nostri primo.* It's true that *Presbyteratus* might denote aswell some Lay-eldership: but as 'tis unlikely that in that age the Clergy-men that were officers of the Chancery, and most commonly drew the Patents, at least judged of the language, would transfer their name of *Presbyteratus* to any such signification; so also I suppose that any such Lay or Civil Officer among them, could not have escaped often mention in the Records of Judaism, yet remaining. Many of them I have perussed, but never met with the name elsewhere than in this Roll. But to this Priest *Jacob* or other like him among them, no Tithes, first Fruits or Therumahs, were, or are by their Canons payable. And agreeing to them expressly herein is [1] *Eusebius*, who, amongst other of their Mosaical Laws, puts their paying of Tithes for one specially that was confined to the land of *Israel* and *Jerusalem*. For, first reciting that about eating the Tithes in the place, [2] *which the Lord shall chuse to cause his name to dwell there*, (which indeed is only spoken of the second Tithe of the first and second years) and joyning it with the general commandement of Tithing, and with the precepts of the Passover, of the feast of Weeks, and of Tabernacles. In which a certain *Place* by such an indefinit designment is also mentioned, he adds at length with reference to them all; Διὰ τοσούτων οὖν τὸν

[1] Ἀποδείξ. εὐαγγελ. lib. α. cap. α.

[2] Deut. 14. 23. & cap. 16.

τόπον

τόπον ὀπισημαινόμενος τοσαυτάκις τε εἰπῶν εἰς αὐτὸν ἀπαντᾶν παγγενοῦ καὶ πανοικαὶ, πῶς ἂν ἥρμοζε τοῖς τῆς Ἰουδαίας καὶ ὀπὶ μίκρον διεστῶσι, μήτι γὲ τοῖς καθ' ὅλης τῆς οἰκουμένης ἔθνεσι· *seeing in so many things he designes out a particular place, so often commanding them to meet there (every Tribe, every Houshold) how can it fit them* or belong to them, *that dwell but a little out of* Judæa? *much less the Nations of the whole world.* But those feasts he speaks of, the Jews at this day observe, although not accurately according to *Moses* his Laws.

Tithes *how paid, or due among the* Gentiles.

CAP. III.

I. *Some* Romans *paid to some Deities, and sometimes only, a Tenth of* spoiles; *of procede of merchandize; of their* estates; *but usually also by* vow, *which bound the Heir or Executor.*

II. Festus *is falsly cited for a* general custom *of payment of Tithes among the Ancients.*

III. *Examples of Tithes paid amoug the* Græcians.

IV. *How the assertions of a* general use *of giving Tithe to the Gods among the* Græcians, *are to be understood; and why* δεκατεῦσαι, *that is,* to Tithe, *signifies also* to Consecrate.

V. *A Tithe paid to* Hercules *of* Tyre; *and* Sabis *an* Arabian *Deity, the same with* Jupiter Sabazius.

I. THe custom of the *Gentiles*, usually talkt of in offering a Tenth, is chiefly to be considerd in the *Romans* and *Græcians*. The *Romans*

mans had a kind of devotion of giving Tithes, but neither yearly, nor by compulsory Law, as some falsly, but confidently, through ignorance in human literature, deliver. The wealthier of them, divers times used to tithe their estates to *Hercules*, by spending the tenth in sacrifices, gifts to his Temples, feasts in his honour, and the like. It appears so, and to be no otherwise, by[4] *Plutarchs* words, in his questioning the reason of it. Διὰ τί, says he, τῷ Ἡρακλεῖ πολλοὶ τῶν πλουσίων ἀποδεκατεύουσι τὰς οὐσίας; *Why do many of the rich men tithe their substance to Hercules?* and elsewhere[5] he (as other Ancients) notes it as a special devotion of some of the sons of Fortune. Neither is old[6] *Cassius* otherwise to be understood, where he derives *Hercules* his Tenth from an innovation made by *Recaranus* in *Evanders* time. This *Recaranus*, he says, first taught them to give the Tenths of their fruits to *Hercules* (to whom he consecrated an Altar under the name of INVENTORI PATRI, after he had regained his herds that *Cacus* had stoln) rather than to the King as before the use was; and then he adds, *inde videlicet tractum ut Herculi Decimam profanari mos esset*; that is, *thence came it to be a custom, that divers did pay him a tithe.* But, neither by their Law, Civil or Pontificial, was this payment. Often it was a thanksgiving after some increase of fortune, and often by vow beforehand, and for the most part, of increase of estate by mony gotten upon sales, and of spoiles of war. For such things that made accessions to their estates, they were sometime so thankful. Whereat *Cicero* jesting says, that ne-

[4] *In quæst. Romanis.*

[5] *In Lucullo*, alibi & *Diodor. Siculi Bibliothec.* 5.

[6] Apud *Aurel. Vict. in Orig. Gent. Rom.*

ver any man vowed *Hercules* a Tenth, in hope of increase of his wit. *Neque*[1] *Herculi quisquam Decimam vovit unquam si sapiens factus fuisset.* Of mony gotten upon sale, an example is in the *Parasite*, that, after reckoning up his good Merchandize, says, he must sell it as dear as he can, that he may spend the Tenth upon *Hercules*.

[1] *De natura Deorum lib* 3.

[3] *Hac venisse jam opus est quantum potest,*
Uti Decumam partem Herculi polluceam.

[3] *Plautus in Sticho.*

whence the same Autor uses the name of [4] *pars Herculana*; and [5] *Tertullian*, speaking of the prodigality of the Gentiles in their feasts; *Herculanarum decimarum & polluctorum sumptus tabularii supputabunt.* For spoiles of war, witness is in that dedication of *Lucius* [4] *Mummius*, which got *Corinth* and setled it to the *Romans*, thus inscribed, and yet remaining at *Riete*.

[4] *In Truculento.*

[5] *In Apologetico cap.* 39.

[4] Anno ab *V. C.*607.

[7] SANCO SEMIPATRI.

De decuma Victor tibi Luciu' Mummiu' donum,
Moribus anteiqueis hoc pro usura dare sese,
Visum animoso, perfecit sa pace rogans te,
Cogendo, dissolvendo ut fælicia faxis,
Perficias Decumam ut faciat vera rationis.
Propter hoc, atq; alieis donis, des cuncta roganti.

[7] *I. Gruter. in Inscript. p.* 96. *& Jos. Scalig. in Catalect. vet. lib.* 11. 14. plura de hoc Epigrammate, quæ adjici possent, heic adnectere intempestivum esset.

Their *Sancus* was *Hercules*; whom they usually titled *Semo Sancus Deus Fidius*, and the title of this transcribed by some, is, *Sanco Fidio Semo Patri*, which I rather think they mistake for *S. F. Semoni Patri.* That *de decuma donum* was some special gift made with

with the coſt of the Tithe of the ſpoiles; and *decuma vera rationis* is there for the beſt of diſcretion and policy, as [1] *edecumata* amongſt the Ancients were the beſt and choiceſt parts, and [1] *Decumanum* the greateſt and faireſt; as *fluctus decumanus*, *ſenta decumana*, *decima unda*, and the Like. The great value that *Hercules* was by thoſe vows honord with, is underſtood in that of *Phaniſcus* [2] of *Tranio*.

[1] Sæpius apud *Symmachum in Epiſtolis*

[1] Videſis *Angel. Polit. Miſcell. cap. 86.*

[2] *Plautus in Moſtellaria act. 4.*

——*unus iſthic ſervus eſt ſacerrimus*
Tranio; is vel Herculi conterere quæſtum poſſet.

But neither did the *Romans* and their next Neighbours thus Tithe only to *Hercules*; but theſe their arbitrary vows and thankſgivings were ſometimes alſo to other Deities. The old *Pelaſgi* [3] that tranſplanted themſelves into *Italy*, gave their Tenth of gain out of Sea-merchandize, to *Apollo* at *Delphi*, according to the Oracles direction, which at *Dodona* before had told them, that being mixt with the *Aborigines*, δεκάτην ἐκπέμψατε φοίβῳ, *they ſhould ſend their Tithe to Phœbus*. That example of *Camillus*, is to every one known, he vowd the Tenth [4] of the ſpoiles to *Apollo*, and moſt carefully took order, by advice from their moſt learned Prieſts, to perform it. And *Poſthumius* Dictator [5] long before upon his happy victory againſt the Latins, tithed the ſpoiles, ſpent forty talents upon ſacrifices and prayers, in honour of the gods, and erected a Temple, with what remaind, to *Ceres*, *Bacchus*, and *Proſerpina*. At other times alſo, on the general worſhip of the gods, ſuch a Tithe was ſpent. And other Deities: beſides any

[3] *Dionyſ. Halicarnaſſ. lib. 1. & Steph.* περὶ πολ. *in* Λάρισ.

[4] *Plutarch. in Camil. Liv. lib.* 5

[5] Vide *Dionyſ. Halicarnaſſ. lib. 6. & 4.*

of theſe, had ſometimes Tenths of gain; as *Fortune*, *Mercury*, being the gods of Travellers and Tradeſmen; and the Deities of the way, or *Dii Semitales*; as *Vius*, and others. So noble *Scaliger* underſtands that which *Taurinus* ſpeaks of his father *Caſius* a Merchant, in an inſcription [a] to *Fortune*.

[a] Catalect. Vet. lib. 1. in. 14.

Omnibus hic annis, votorum more ſuorum,
Centenas adicit, numero creſcente, coronas
Fortunæ ſimulacra colens, & Apollinis aras,
Arcanumque Vii ——

Thus in *Italy* the cuſtom was arbitrarily to pay and vow Tithes to their Deities, and continued in uſe till the later times of the Empire, as appears alſo in that Law receivd from *Ulpian* by [b] *Juſtinian*. *Si Decimam quis bonorum vovit, decima non prius eſſe in bonis deſinit, quam fuerit ſeparata, & ſi forte, qui decimam vovit, deceſſerit ante ſepoſitionem, hæres ipſius, hæreditario nomine, decimæ obſtrictus eſt. Voti enim obligationem ad hæredem tranſire conſtat.* By this it is manifeſt that though the vow, or payment without vow were arbitrary; yet, upon death, after vow made, the Heir or Executor of him that vowed was bound to pay; according as alſo in like vows [c] of Houſes, Land, or Chattels, to the honour of a Martyr, Prophet or Angel, the Law was among old Chriſtians.

[b] ff. tit. de Policit. l. 2. quis. Sect. 2.

[c] Cit. de Sacroſanct. Eccleſ. 25. Si quis donaverit.

II. The view of theſe examples plainly diſproves that aſſertion uſed by many out of *Feſtus*: *Decima quaque veteres Diis ſuis efferebant.* No ſuch matter: ſome did, and only ſometimes, and of ſome things, and moſt uſually to ſome gods only. *Feſtus* himſelf

was

was too learned to have left ſuch a monument of ignorance. No doubt is, but that which *Feſtus* had there in ſome larger note obſerved, according to a truth agreeing with what is before opened, was too boldly contracted into that piece of untruth, by his Epitomator *Paulus Diaconus*. As in him, ſo in many other, moſt obſervable things have periſhed, both by the ignorance aſwel as negligence of inſufficient Epitomators. And *Paulus* is well taxed for it by the divine *Scaliger*. *Vide*, ſays he, *quantum juris barbarus ille ſibi ſumpſerit in hoc loco mutilando!* indeed, moſt of that, which we call and receive as *Sextus Pompeius Feſtus*, is *Paulus* his only, abridged out of *Feſtus*. And thoſe of the middle [1] Ages cited it under the name of *Paulus* his Gloſs. But when *Scaliger* there adds; *Uni enim tantum Herculi hoc fiebat*; he mends it not enough. For if it had been *Decima quaque Herculi veteres offerebant*, it had been falſe, if underſtood as of Tithes uſed to be given by all, or of all things. They conſiſted plainly in vows and ſpecial thankſgiving, which were wholly arbitrary, as Tenths or Fifteenths given by the Subject in Parliament; and had the offering of them been uſual of yearly increaſe, *Cato*, that in his *de Re Ruſtica* hath ſo fully the ceremonies of Sacrifices to be uſed by the husbandman in his Harveſt, had never omitted it.

[1] *Hincmar. Rhemenſ. opuſ. adverſ. Epiſcop. Laudunenſ. c. 10.*

III. The *Græcians* (under which name, comprehend the *Aſians* that were of *Greek* manners) often conſecrated their Tithes to *Apollo*. Witneſs an inſcription at *Delphi*, ſacred to him, [a] having this Verſe,

[a] *Clem. Alex. Stromat. v.* Ὅσσα

Ὄρρα Θεῷ δεκάτην ἀκροθίνια τὲ κρεμάσαιμεν.

That we may hang up Tithes and first Fruits to the honour of Phœbus. And, that famous [1] *Rhodopis* sent to *Delphi* as many spits, for use in sacrifice, as the Tithe of that gain which she had made of her body came to. The *Crotonians*, before their war against the *Locrians*, vowed a Tenth [2] to him; and the *Locrians*, to exceed them that way, a Ninth. The Oracle having given it out, that rather by excess in vows than armes, the victory should be gain'd. To the same Deitie the inhabitants of *Siphnus* gave [3] yearly the Tithe of their mines which they found in the Isle. And after a victory against the *Thessalians* [4] had by the *Phocians*, they made two statues of the Tithe of the spoiles for him. Of *Agis* and *Agesilaus* the like devotion is [5] remembred. Other like examples are. Hence was *Apollo* called δεκατηφόρος, as if you should say, *Crownd with Tithes.* And in regard the offerings to him were either the Tenth, orgiven as in lieu of so much, they were stiled δεκατηφόροι ἀπαρχαὶ, as if you should say, *first Fruits in Tenths.*

[1] Herodot. lib. ζ.

[2] Trogus histor. 2

[3] Herodot. lib. γ.

[4] Idem in Urania.

[5] Xenophon Græc hist. γ. & in vita Agesilai.

Ἄλλα τοὶ ἀμφιετεῖς δεκατηφόροι αἴεν ἀπαρχαὶ πέμπονται ———

says an ancient [6] to *Delos*, where *Apollo* was born and worshipped; that is, *yearly first-fruits in Tenths are sent thee.* So I understand it. But also to others sometimes joynd with him, the like offerings were. After *Pausanias* his victory against *Mardonius*, the mony of the [7] Tenth of the spoiles was by consecration divided, between *Jupiter Olympius*, *Neptunus*, *Isthmicus*

[6] Callimach. in hymn. ad Delum.

[7] Herodot. lib. θ

Isthmicus, and *Apollo* elsewhere [1] *Diana* of *Ephesus* participates with him. To other Deities without him, sometimes was this honor given; as to [3] *Jupiter*: to whom also *Cypselus* [4] of *Corinth*, when he vowd all the goods of the Citizens if he could get the City, had special regard to the Tenth part, as competent to a Deity; when to performe his vow, he gave yearly, for ten year together, the Tithe of all their estates, and left them the nine for their maintenance and merchandize. And *Cræsus* admonisht by *Cyrus*, would not have the goods of the *Lydians* [5] ransackt by his Souldiers, ὡς σφέα ἀναγκαίως ἔχει δεκατευθῆναι τῷ Διί; *Because necessarily they were to be tithed to Jupiter*. Sometimes *Juno* hath this part; as in [6] *Samos*, the Tithe of certain Merchants goods was consecrated to her in a Cup. *Pallas* sometime hath it. Divers of the *Bœotians* and *Chalcidians* being taken prisoners by the *Athenians* and ransom'd, the [7] *Athenians*, with the Tithe of the ransome, consecrated a Chariot to her. She also had among them the Tithe of all goods [1] confiscat, and that they calld ἐπιδέκατον. And a tradition was among them of *Priapus* a *Genius* of war, that at *Juno*'s request taught *Mars* first to dance, and then made him a perfect Souldier; that [6] *Juno* gave him for a perpetual salary, all the Tithe of the spoiles that *Mars* should gain in his victories.

IV. These examples among the *Gracians* are; for some kind of Tithes vowd, or otherwise arbitrarily, or by some local custom paid to special Deities. But testimonies are not wanting among them, as

[1] Xenoph. ἀναβασ. Cyr. 1.

[3] Pausan. Eliac. α & in Phoricis.

[4] Aristot. in Oeconomic. C.

[5] Herodot lib. α.

[6] Idem in Melpom.

[7] Idem in Terpsichor.

[1] Xenoph. histor. Græc. lib. 1. & videsis Meursium Attic. lect. 5. c. 13.

[6] Lucian. περὶ ὀρχήσεως.

as general almost as that of *Festus* is for the *Romans*. τὰ ἐκ τῶν (saith *Harpocration*, and out of him, *Suidas* πολεμίων ληφθέντα ἐδεκάτευον τοῖς θεοῖς, *They used to Tithe their spoiles of war to the gods*:) and *Didymus* [1] an old Grammarian, tells us that, ἔθος ἦν ἑλληνικὸν τὰς δεκάτος τῷ περιγινομένων τοῖς θεοῖς καθιερῶν, *It was a Greek custome to consecrate the Tithes of their abundance to the gods.* From whence both he and *Suidas* fetch the reason why δεκατεύσαι, *to Tithe*, signifies also *to consecrate*; but therein they are deceived. Neither doth he *Greek* phrase *to Tithe*, signifie generally *to consecrate*; but in this notion it denotes only a special consecration of young *Athenian* maids made to *Diana* in her feast *Brauronia*. None by their Law was to [2] have a husband, but such as were then initiated to her; and none was to be initiated but between five and ten years of age; from which utmost year (because for the most part till then, they staid from these Rites) the Virgins to be initiated, were called, δεκατίδες, as if you should say, *ten yearlings*; and thence came [3] the word δεκατεύσαι to signify, to this purpose only, to consecrate or initiat, which otherwise was exprest by ἀρκτεῦσαι. But if those Grammarians meant that all men paid their Tithes in *Greece*, and that of every kind of their spoiles or abundance, they deceive much and are deceived: you must understand them as speaking of what was sometimes, and by vow or special thanksgiving, done. Their saying it was a *Custom to Tithe*, or that *they tithed*, is but like that of Cassius: *mos erat Herculi decimam profanari*. Among the *Romans*, it was a custom sometime and of somethings

[1] Apud *Harpocrationem in* δεκατεύειν.

[2] *Suidas in* ἀρκτεύειν.

Hesych. in [3] ἀρκτεύειν. & *Harpocration in* δεκατεύειν.

things to do it, as it was a custome to consecrate Statues, hairs, vessels, and other more such-like to Deities. Yet were those customes no more general or binding all or done by all, than the custome, in some Cities among us, to offer at wedding days. It was a custome or use to do so, that is, many men did so. The examples before taken out of story make that plain. And in that sence only are these autors to be credited, touching the consecrating of Tithes to the gods in general. For sometimes they were generally given to the gods, without any particular designed. *Suidas* [5] relates an example thereof, among the *Lydians*. And when the *Athenians* had divided *Lesbos* into 3000 parts, they [6] consecrated 300. that is the Tenth, generally to the gods; and *Pisistratus* writing to *Solon* touching the tribute of a Tenth, says, that he took Tithes of every one of the people, not so much for his own use, as [7] εἰς θυσίας δημοτελεῖν, *as for publick sacrifice or the use of the gods in general.* And the Tenth of what the Cooks in [8] *Athens* killed for meat, was so due for a publick use in honor of the gods, if my Author deceive not.

[5] *In* Μύξος

[6] *Thucydides lib.* γ. τοῖς θεοῖς ἱερὺς ἐξεῖλον, hoc est, ἐξαι τὺς ἀνέθεσαν, inquit Scholiastes vetus.

[7] *Laert.* [illegible] *Philos. lib.* α.

[8] *Scholiast. in Aristoph.* ἱππεῖς.

V. Here may be added to the *Gracians* use, the example of the [9] *Carthaginians*, that sent the Tithe of their *Sicilian* spoiles to *Hercules* at *Tyre*. And you may remember that *Arabian* Law, wherein every Merchant was bound to carry his Frankincense to *Sabota* (which the Learned take to be *Saubatha* in *Ptolemie*; the chief City of *Arabia fœlix*) and there offer to their god *Sabis* the [0] Tenth of it, which his Priests received. Neither might any sale be

[9] *Justin. lib.* 1

[0] *Plin. hist.* 12. c. 14

made of it till that was paid. *Sabis* doubtleſs was their *Bacchus*, *Uranus*, *Jupiter*, or *Sabazius*; which are one. For the Deities of the *Arabians* were always accounted but [a] two: the god *Uranus* (known also by thoſe other names) and the goddeſs *Urania* or *Venus*: it is neareſt truth therefore, that their *Sabis* is the ſame with *Sabazius*, which was firſt corrupted from *Zaboth*, commonly occuring in holy Writ as an attribute to the only and true GOD. And as this name, ſo the payment of the Tenth very likely came to them from the uſe of it among the *Jews*, their Neighbours, as alſo to the *Carthaginians* from their Anceſtors the *Phœnicans*, that ſpake the ſame language with the Jews, and converſt moſt with them. Neither is it unlikely but that the ancient and moſt known examples of *Abraham*, gave the firſt ground, both to them and to the *Europeans*, ſo ſometimes to diſpoſe the Tenth of their ſpoiles of war to holy uſes. For 'tis no news to have the eldeſt of Jewiſh cuſtoms uſurpt (though according to time and place diverſly varied) amongſt the Gentiles. What of later time is found among *Mahumedans* for the Tenth paid, muſt be refer'd to the Moſaical Law, which they receive as authentick, but keep it according to *Mahumeds* fancy, and the doctrine of his Canoniſts. You may remember here [b] *Eudemus* his relation of ſome kind of beaſt in *Africa*, that always divided their prey into eleven parts, but would eat only the Ten, leaving the Eleventh as ἀπαρχὴν τινα ἢ δεκάτην, *a kind of firſt Fruit or Tithe.* So ſays my Author, and take his word alone; I am not his Surety.

[a] *Celſus ap. Originem lib. 2. Arrian. de geſt. Alex. Strabo lib. 15. Herodot lib. 3.*

[b] Apud Ælian. περὶ ζώων. *lib. 4. cap. 53.*

In

In the *first four hundred years* after Christ.

CAP. IV.

I. *No* use *of* Tithes *occurs till about the end of this four hundred years.* Offerings *and* Monthly pay *for maintenance of the Church in the primitive times.* Divisiones Mensurnæ. Sportulæ.

II. *Payment of* Tithes *of* Mines *and* Quarries *to Christian Emperors. The* wealth of the Church *envied.*

III. *The opinion of* Origen *touching* Tithes.

IV. Constitutions *of those times that mention them, are of no credit.*

I. SInce our Saviour, the time being about M D C. years, it will fall aptly enough so to divide that number quadripartitly, that we may discover the known *Use*, *Opinion*, and *Constitutions* of every *four hundred years*, touching the *duty* or *payment* of Tenths. The difference or latitude of X X. years or some such number, either of increase or want (as occasion shall serve) being allowed, and the *English Law* and *Use* (because therein we shall be most particular) being referred to the last seven Chapters. Till towards the end of the first four hundred, no *Payment* of them can be proved to have been in use. Some *Opinion* is of their being due and *Constitutions* also; but such, as are of no credit. *For the first*, 'tis best declared by shewing the course of the Church maintenance in that time.

So liberal, in the beginning of Christianity, was the devotion of the believers, that their bounty, to the Evangelical Priesthood, far exceeded what the Tenth could have been. For if you look to the first of the *Apostles* times; then the unity [a] of heart among them, about *Jerusalem*, was such that all was in common and none wanted, and *as many as were possessors of lands or houses, sold them and brought the price of the things that were sold, and laid it down at the Apostles feet, and it was distributed unto every man according as he had need.* And the whole Church, both Lay and Clergy, then lived in common as the Monks did afterward about the end of the first four hundred years, as [b] S. *Chrysostom* notes. οὕτως (says he) οἱ ἐν τοῖς μοναστηρίοις ζῶσι νῦν ὥσπερ τότε οἱ πιστοὶ, that is, *so they live now in Monasteries, as then the believers lived.* But this kind of having all things in common, scarce at all continued. For we see, not long after in the Church of *Antiochia* (where Christianity was first of all, by that name, profest, every one of the Disciples [c] had a special ability or estate of his own. So in *Galatia* and in *Corinth*, where S. *Paul* ordaind that *weekly offerings* for the Saints should be given by every man as he had thrived in his estate. By example of these, the course of *monthly Offerings* succeeded in the next ages. Those *monthly Offerings* given by devout and able Christians, the Bishops or Officers appointed [d] in the Church, received; and carefully and charitably disposed them on Christian worship, the maintenance of the Clergy, feeding, cloathing, and burying their poor brethren,

[a] *Act. cap.* 43. 4.

[b] *Homil* 11. *in Acta*

[c] *Act Apostol. cap.* 11. 29.

[d] *Epist.* 1 *ad Corinth cap.* 16. 2 vide *Ockam in Oper* 90 *dierum cap.* 107

[d] Vide *Synod. Gangr. Can.* 66

thren, widows, or orphans, perſons tyrannically condemned to the Mines, to Priſon, or baniſht by deportation into Iſles. They were called *Stipes* (which is a word borrowed from the uſe of the Heathens in their collections made for their Temples and Deities): neither were they exacted by Canon or otherwiſe, but arbitrarily given, as by teſtimony of moſt learned [1] *Tertullian*, that lived about CC. years after Chriſt, is apparent. *Neque pretio* (are his words) *ulla res Dei conſtat. Etiam ſi quod arcæ genus eſt, non de oneraria ſumma quaſi redemptæ religionis congregatur, modicam unuſquiſq; Stipem menſtrua die vel cum velit, & ſi modo velit, & ſi modo poſſit, apponit. Nam nemo compellitur, ſed ſponte confert. Hæc quaſi depoſita pietatis ſunt.* And then he ſhews the imployment of them in thoſe charitable uſes. Some authority is, that about this time lands began alſo to be given to the Church. If they were ſo; out of the profits of them and this kind of Offerings, was made a treaſure; and out of that, which was increaſed ſo monthly, was a monthly pay given to the Prieſts and Miniſters of the Goſpel (as a ſalary for their ſervice) and that either by the hand or care of the Biſhop, or of ſome Elders appointed as *Oeconomi* or Wardens. Thoſe monthly pays they called *menſurna diviſiones*, as you may ſee in [2] S. *Cypian*, who wrote being Biſhop of *Carthage*, about the year CCL. and, ſpeaking familiarly of this uſe, calls the Brethren that caſt in their monthly offerings, *fratres ſportulantes*; underſtanding the offerings under the word *ſportula*, which at firſt in *Rome* denoted a kind

[1] *Apologetic. c.* 39. & videſis *c.* 42.

[2] *Urban. 1 in Epiſt. c.* 12. *q.* 1. *c.* 16. Sed & vide *Euſeb. Eccl. hiſt. lib.* 9. *c.* 9. Edict. *Maximini, & lib.* 10. *c.* 5. Edict. Conſtant. & *in l.* 2. *de vita* Conſtantini, *c.* 39.

[3] *Cyprian. Epiſt.* 27. & 34. & vide *Epiſt.* 36. editione Panmeliana.

of running banquets distributed at great mens houses to such as visited for salutation, which being oft-times also given in mony (as you may remember out of *Martial*) the word came at length to signify both those salaries, wages, or fees, which either [8] Judges or Ministers of Courts of Justice, receivd as due to their places, as also to denote the Oblations given to make a treasure for the salaries and maintenance of the Ministers of the Church in this primitive Age. And to this purpose was it also us'd in later [9] times. But because that passage of S. *Cyprian*, where he uses this phrase, well shews also the course of the maintenance of the Church in his time, take it here transcribed. But first know the drift of his Epistle to be a reprehension of *Geminius Faustinus* a Priest, his being troubled with the care of a Wardship, whereas such, as take that dignity upon them, should (he says) be free from all secular troubles, like the Levites, who were provided for in Tithes. *Ut qui* (as he [o] writes) *operationibus divinis insistebant, in nullare avocarentur, nec cogitare aut agere secularia cogerentur*: and then he adds, *Quæ nunc ratio & forma in Clero tenetur, ut qui in Ecclesia Domini ad ordinationem Clericalem promoventur nullo modo ab administratione divina avocentur, sed in honore Sportulantium fratrum, tanquam Decimas ex fructibus accipientes, ab Altari & Sacrificiis non recedant, & die ac nocte cælestibus rebus & spiritualibus serviant.* Which plainly agrees with that course of monthly pay, made out of the Oblations brought into the Treasury; which kind of means he compares to that

[8] *Papinian ff. de Decurion. L. 6. Sect. 1. & C. tit de Sportulis* & vide *Glossas Græc. juris in* Σπόρτουλα.

[9] *Concil Chalced. A. D 451. in libel.* Samuelis *& al. contra Iban.* & videsis *Tom 3. Concil fol. 231. cap 31. edit. Binii. penultima.*

[o] *Epist. 266. edit.* Pammel.

that of the Levites. as being proportionable. Bu hence alſo 'tis manifeſt, that no payment of Tithes was in S. *Cyprians* time in uſe, although ſome too raſhly, from this very place would infer ſo much: thoſe words *tanquam Decimas accipientes* (which continues the comparing of Miniſters of the Goſpel with the *Levits*) plainly exclude them. And elſewhere alſo the ſame Father finding fault with coldneſs of devotion that then poſſeſt many, in regard of what was in uſe in the Apoſtles times, and ſeeing that the Oblations given were leſs then uſually before, expreſſes [1] their neglect to the Church, with *at nunc de patrimonio nec Decimas damus.* Whence, as you may gather that no uſual paiment was of them; ſo withal obſerve in his expreſſion, that the liberality formerly uſed had been ſuch, that, in reſpect thereof, Tenths were a ſmall part. Underſtand it as if he had ſaid, *but now we give not ſo much as any part worth ſpeaking of.* Neither for ought appears in old monuments of credit, till near the end of this firſt four hundred years, was any payment to the Church of any tenth part, as a Tenth, at all in uſe.

[1] *De unitate Eccleſiæ, Sect. 23.*

II. But ſome Laws of this time yet remain, which ſhew that Tenths out of Mines and of Quarries were paid, both to the Emperor and to the Lord of the ſoil; as in the ancient ſtate of *Rome* the Tenants of the Lands of the Empire paid for Rent the [2] Tenth of their Corn; whence the Publicans that hired it (as the Cuſtomers do here the Kings cuſtome) were called *Decumani.* Thoſe Laws for the tenths of Mines and Quarries, were made by

[2] *Appian. lib. 1. &c.*

by [4] *Gratian*, *Valentinian*, and *Theodosius*, Christian Emperors, about CCC. LXXX, and shew withall that they thought not then of any Tenth of such things, to be given otherwise, when indeed (however *Cyprian* might before have cause to complain in *Africk*) Christian bounty in Oblations (especially at *Rome*; and with proportion like enough in other Churches) so inricht the Clergy, that their wealthy happiness thence was much wonderd at, and not a little, from thence, envied. For the then Bishop of *Rome* his wealth, from Oblations chiefly, you may see [5] *Marcellinus*. For other of the Clergy, a whole Sermon is in [6] S. *Chrysostom* that lived at the end of this first CCCC. years, against such as envied the wealth of the Church, that grew only out of such Christian devotion to the Priesthood.

[4] C. tit. de Metallariis l. 3. Cuncti. & in C. Theodos. l. 10. tit. 19 l. 10. & 11.

[5] Amm. Marcellin. l. 27.

[6] Tom. 6. edit. Saviliana. p. 897. ὅτι οὐ χρὴ ὀνειδίζειν τοὺς ἱερεῖς, &c.

III. As touching *Opinion* in that time; *Origen* a great and most learned Father, living about the year CC. hath a whole Homily [7] upon the Text of first Fruits in the Law, wherein while he teaches that some things are literally to be observed, he well admonisheth that 'tis the part of a wise Interpreter to find out which are so, and which not. And then first he delivers his judgment, that this of first-Fruits is one to be observed still according to the letter, and gives this reason; *Decet enim* (as the Latin is, the Greek I neither have, nor could ever learn that it hath been publisht) *& utile est etiam Sacerdotibus Evangelii offerri primitias. Ita enim & Dominus disposuit, ut qui Evangelium annuntiant de Evangelio vivant, & qui Altari deserviunt de Altari participent*; and

[7] Homil in numer.

and a little after adds also for Tithes: *Et adhuc ut amplius hæc observanda etiam secundum literam ipsius Dei vocibus doceamur, addemus ad hæc; Dominus dicit in Evangeliis;* Væ vobis Scribæ & Pharisæi, hypocritæ, qui decimatis mentam, *hoc est*, Decimam datis mentæ & cymini & anethi & præteritis quæ majora sunt legis. Hypocritæ, hæc oportet fieri & illa non omitti. *Vide ergo diligentius quomodo sermo Domini vult fieri quidem omnimode quæ majora sunt legis, non tamen omitti & hæc quæ secundum literam designantur. Quod si dicas, quod hæc ad Pharisæos dicebat, non ad discipulos; audi iterum ipsum dicentem ad Discipulos:* Nisi abundaverit justitia vestra plusquam Pharisæorum & Scribarum, non intrabitis in regnum Cœlorum. *Quod ergo vult fieri a Pharisæis multo magis, & majore cum abundantia, vult a Discipulis impleri.* And a little after; *Quomodo ergo abundat justitia nostra plusquam Scribarum & Pharisæorum, si illi de fructibus terræ suæ gustare non audent priusquam primitias Sacerdotibus offerant & Levitis Decimæ separentur; & ego nihil horum faciens fructibus terræ ita abutar, ut Sacerdos nesciat, Levites ignoret, divinum Altare non sentiat.* And in this form, and upon these reasons, he brings in that of Tenths in the Gospel, to prove his purpose of first-Fruits. But in his conclusion upon it, he leaves out Tenths, and speaks only of first Fruits, thus. *Hæc diximus asserentes mandatum de primitiis frugum vel pecorum de ære etiam secundum literam stare.* What we have transcribed shews both his opinion fully and the ground of it; without which specially ob-

ſerved, error ſoon follows oft-times in collection from authority. For *Opinion* of this time, thus much. More, I confeſs, might be added out of ſome other great Fathers, as S. *Ambroſe*, and S. *Auguſtine*: but becauſe they fall ſo near the end of our firſt age and continue into the ſecond; they are omitted here and referred to the beginning of the next four hunderd years.

IV. For *Conſtitutions* of the Church; if you could believe thoſe ſuppoſed to be made by the Apoſtles, and to be collected by Pope *Clement* the firſt, you might be ſure both of payment in the Apoſtles times, as alſo of an expreſs opinion as ancient for the right of Tenths. There you read, » *Quæ ſecundum Dei mandatum tribuuntur, Decimas dico & primitias, inſumat Epiſcopus ut homo Dei*; and the right is there largely grounded upon the Levitical commandment. But no man that willingly and moſt groſſly deceives not himſelf, can believe that this *Conſtitution* or divers others there, are of any time near the age of the Apoſtles, but many hundred years after. The little worth, and leſs truth, of the whole Volume is enough diſcoverd by divers of the learned. And it was long ſince branded for a counterfeit in an *Oecumenical* * Council, when, doubtleſs, it was not yet neither ſo ſtufft with Canons of later birth, as ſince it hath been; neither are there greater arguments againſt it as now it is, then ſome paſſages of fact that obviouſly occur in it, among which this may clearly go for on. Had it been the Apoſtles ordinance or the uſe of the Church in the

» *Clement. in Conſtit. Apoſtol. lib. 2 Cap. 25.*

* *Synod. 6. in Trullo, circa. a. 690. Can. 2.*

Pri-

Primitive times, *Origen*, *Tertullian* and *Cyprian* (having ſuch occaſion to mention it) could not have been ſo ſilent of it. And is it likely that all the old Councils, from thence till near DC. years after Chriſt (which, being authentick beyond exception, have ſpecial Canons for the lands and goods poſſeſt by the Church, the offerings, Revenues, and ſuch more) could have omitted the name of Tenths, if either ſuch uſe or Apoſtolical Law had preceeded? They talk of χωρία ἐκκλησιαστικὰ, *the goods of the Church*, ἐκκλησιαστικὰ πράγματα, or *Offerings of fruits*; but have not a word-any-where of the Tenth part. And in thoſe counterfeit [1] *Canons* alſo which ſome too credulouſly (and thoſe alſo that wholly reject the eight Books of *Clementines*) received as made by the Apoſtles, one is indeed of firſt-Fruits (although, touching them by that name, certainly no Law was made under the Apoſtles) but no word of Tenths. Of a like credit, its to be feared, is that which is attributed to a fourth Council of *Rome*, held about the year CCG. LXXX. by Pope *Damaſus*: indeed (upon Cardinal *Baronius* [2] his credit) in the *Vatican* the Legend of this Pope, which was us'd to be read in the Church, is extant, and with ſome miracles, are mixt in it certain decrees, ſuppoſed his, and made in he knows not what, Council at *Rome*, of which one is; *Ut Decimæ atque primitiæ a fidelibus darentur, & qui detrectarent anathemate ferirentur*, as he relates it. But thoſe decrees, being taken out of the Legend of him, neither ever were received as Canonical in the Church, nor hath

[1] *Canon. Apoſt. cap. 3. & 4.*

[2] *Baron. Annal. tom. 4. ann. 382 pag. 399. & a. 384. pag 427 edit Plantiniana*

the eldeſt *Code* of the Church of *Rome*, or *Fulgentius*, *Creſconius*, *Iſidore*, *Burchard*, *Ivo*, or *Gratian*, mention of any of them. Not becauſe what was taken to be truly his, was altogether wanting; for the Canons of one Council of *Rome* under him, his Epiſtles, and ſome Decrees are and have been from ancient time, publick and diſperſed in ſome of thoſe Compilers; and one [8] eſpecially they have of his time, which being made only for the diſpoſition of ſuch things as were given to the Church, ſpeaks only of *Oblations*; but this of Tithes or any of the reſt joynd with it touching Uſuries, Witches, and other more, (which *Baronius* only and firſt publiſht to the world, out of the Ms.) none of them once remember. Neither before *Binius* his edition had any Volume of the Councils received into them a memory of any ſuch Decrees under this *Damaſus*, or any Council of his of that number. Thoſe kind of Acts and Legends of Popes and others, are indeed uſually ſtuft with ſuch falſhoods, as being bred in the middle ages among idle Monks, not only grow ancient now, but are received amongſt us with ſuch reverence, that the antiquity which the Copies have gaind out of later time, is miſtook for a Character of truth in them for the times to which they were firſt, by fiction or bold interpolation, referd. In ſum, no example for the Synods of ſucceeding ages, no antiquity for the Compilers of the Canons had been of equal reverence to this of a Pope, and done at *Rome*; neither had they omitted every of thoſe Decrees, had they been truly his. Confidently

[8] C. 10. q. 1. c. 15. *hanc conſuetudinem.*

dently conclude, they are ſuppoſititious. Yet remember too that ſome colour is for the truth of ſuch a Conſtitution, in regard that about that time the firſt memory is of Tithes by that name paid in the primitive Church; as in the next part of this diviſion ſhall be declared. And were that [a] Epiſtle not counterfeit, which is attributed to S. *Hierom*, as written to this Pope upon that queſtion: *Utrum uſus decimarum & oblationum ſecularibus pervenire poſſit*, it might be good cauſe to maintain the truth of this Decree of his for Tithes. But plainly that Epiſtle is alike fained; neither taſtes it of him or of any time near that age; nor hath it been ever received among that moſt learned Fathers works.

[a] C. 16 q. 1. c. 68. *quoniam ut genuinæ D. Hieronymi meminit etiam Innocent. 3. in extr. de his quæ fiunt a Prælatis. c. 7. cum. Apoſtolica.*

From about the year CCCC. *till* DCCC.

CAP. V.

I. *Tithes were now* paid *in divers places, to* Abbots, *to the* Poor, *to the* Clergy.

II. *Some* Conſecrations *were then made in perpetual right, at the pleaſure of the Owner.*

III. *That ſtory of* Charles Martel *his taking away Tithes, and making them* feodal, *cannot be juſtified.*

IV. *The opinions of* S. Ambroſe, S. Auguſtine, S. Hierom, *and* S. Chryſoſtom, *the firſt two teach, the Tenth due by Gods Law; the other two perſwade only that a leſs part ſhould not be offered.*

V. *Of* Canons, *for the payment of Tithes, that are attributed to this Age.*

VI. *No* Canon *or* other Law *was yet generally received to compel any payment of Tithes, although among the offerings of devout Christians, gifts of that quantity, were received as due by the* Doctrine *then in use, in* some places *only.*

ABout the beginning of the next, or rather some years before the end of the first part of this division, and afterward, *Tenths were paid*, or, for holy uses offerd (as the phrase was) in divers places, in Offerings of that quantity; and some testimony is of *Churches* also endowed with the *perpetual right* of them in the later half of this four hundred years. Great *Opinion* was now of their being due. And some *Canons* and Provincial *Constitutions*, attributed to this time, ordain a payment of them. But not above one of these (and that's only Provincial) is of any credit.

I. That they were offered under the name of Tenths in part of *Italy*, may be collected out of S. *Ambrose* who was Bishop of *Millan* before, and after the year CCC. XC. And the like for the Diocess of *Hippo* may be suppos'd out of S. *Augustines* vehement Sermon for the payment of them. The words of both these Fathers (which in relating their opinions are anon transcribed) may enough prove, that some did in those times offer them. And it may be, [a] S. *Hierome* pointed at the receiving of Tithes then so offer'd, in those words of his, spoken in the person of a Clergyman. *Si ego pars Domini sum & sum iclus hæreditatis ejus, nec accipio partem inter cæteras*

[a] *Epist ad Nepotianum de vita Clericorum.*

teras tribus, ſed quaſi Levita & Sacerdos vivo de Decimis, & Altari ſerviens Altaris oblatione ſuſtentor, habens victum & veſtitum, his contentus ero & nudam crucem nudus ſequar. But 'tis neceſſity to underſtand him ſo. It may well be, that *de Decimis* there is but a continuance of the compariſon made by *quaſi Levita*; as if he had ſaid, *But live like a Levite that lived of the Tithes, and ſerving at the Altar, and maintaind by the offerings at the Altar, &c.* What in *Gratian* is falſly attributed to him, is before remembred. In *Ægypt* alſo, ſome holy Abbots had Tithes of all fruits offered them about the beginning of this age. *Certatim Decimas vel primitias frugum ſuarum memorato ſeni* (to Abbot *John*) *de ſuis ſubſtantiis offerebant,* [1] ſays *Caſſian*, the Hermit that lived about the year CCCC. XXX. and the Abbot receives the offering with this kind acknowledgment; *Devotionem hujus oblationis (cujus diſpenſatio mihi credita eſt,) gratanter amplector, quia fideliter primitias veſtras ac Decimas indigentium uſibus futuras, velut ſacrificium Domino bonæ ſuavitatis offertis.* Where it appears the Abbot received them as a Treſurer for the poor. And about the year CCCC. LXX. Chriſtians alſo in *Pannonia*, by example of S. *Severins* bounty, gave the Tenth of their fruits to the poor. *Devotiſſime* (ſays [2] my author that then lived alſo) *frugum ſuarum Decimas pauperibus impendebant; quod mandatum, licet cunctis ex lege notiſſimum ſit, tamen quaſi ex ore Angeli præſentis grata devotione ſervabant.* And a little after, he relates that the Inhabitants of *Lauriacum* (which ſome take for

Lorch

21 ad Tim. cap. 6. 8.

[1] Collat. Abbat. Theone, 21. cap. & 2.

[2] Engippius in vita S. Severini cap. 17. & 18.

Lorch in *Austria*) being often admonisht by S. *Severin*, to pay the Tenths of their fruits to the poor, had notwithstanding omitted it; whereupon, their Corn being blasted, they humbly come unto him, *pœnas sua contumacicæ confitentes*, acknowledging their loss as a reward of their fault. And the Saint answers them; *Si Decimas obtulissetis pauperibus, non solum aterna mercede frueremini, verum etiam commodis possetis abundare præsentibus.* Whence is seen both the received use of offering them in that place, as also the opinion of *Severin*. And in a Provincial Council at *Mascon*, held in the year D. LXXXVI, that is, the XXIII. of King *Guntheram*, by all the Bishops subject to his government in *France*, the payment of Tithes, into the hands of the Ministers of the Church, is spoken of, as of good antiquity at that time, and grounded upon the *Mosaical* Laws, which they call there *divinas*, and add; *quas leges Christianorum congeries longis temporibus custodivit intemeratas*: that *long time* they speak of, might have had perhaps beginning from the doctrine of those two great Fathers S. *Ambrose*. and S. *Augustine*, about the year CCCC. whereof, more presently. But observe that *Leo* the Great (he was Pope from CCCC. PL. to CCCC. LX.) hath divers Sermons, yet remaining[t] *De jejunio Decimi mensi & eleemosynis*, wherein he is very earnest and large, in stirring up every mans devotion, to offer to his Parish Church part of his received fruits, but speaks not a word of any certain quantity. The like may be noted in some Homilies of S. *Chrysostom*, touch-

[9] *Matiscon. Concil. 2. cap. 51.*

[t] Vide cum in *Epist. ad Philippens. & Sermonem* 103. in eos, qui Clericorum opulentiam invidernnt, Tom 6. Edit. Savilliana.

touching the Churches maintenance, in which you might wonder how Tithes were omitted, if either devotion or doctrine had near the beginning of theſe CCCC. years made payment of them (eſpecially in the more Eaſtern parts) of any common uſe. For the later part of thoſe years, ſee towards the end of this Chapter.

II. But beſide the offering of Tenths yearly (as was done by the devouter ſort, ſometimes to the Miniſters of the Sacraments, ſometimes to Abbots, and the like) a perpetual right alſo of them was conſecrateed to ſome Churches, by grant or aſſignment, out of ſuch or ſuch land, at the owners pleaſure; and that long before the end of this four hundred years. Theſe ſpecial endowments may be collected from a Canon of a Council of [6] *Arles*, held in the year DCCC. XIII. which thus ſpeaks: *Ut Eccleſiæ antiquitus conſtitutæ, nec Decimis, nec ulla poſſeſſione priventur*, and other Provincials of that time, and Laws of *Charlemain* agree with it as that of his thus ſpeaking; [4] *Eccleſiæ antiquitus conſtitutæ, nec Decimis, nec aliis poſſeſſionibus priventur, ita ut novis oratoriis tribuantur.* Theſe cannot well be underſtood, unleſs you interpret them to mean Churches anciently endowd with Tithes. And what was then about the year DCCC. ſaid to be anciently endowed, muſt be referd back into ſome part of the time we now ſpeak of. Neither are the monuments of that time without example of ſuch endowments. It is reported that *Pipin* about the year DCC. L. granted the Tithes of all that lay

[6] *Arelat.* 4. *c.* 9. vide *c.* 16. *q.* 1. *c.* 42, 43. & 14.

[4] *Anſegiſus Capitular. lib.* 2. *c.* 36 & vide *lib.* 2. *cap.* 154.

between *Ourt* and *Leſche* two Rivers of *Ardoinne*, to a church conſecrated to the honor of S. *Monon*. So I take that in [g] S. *Monon*'s life. *Beato viro ob titulum Chriſtianitatis mactato Pipinus Rex regaliter Decimas obtulit, quas habet inter Letiam & Urtam.* So about the year [h] DC. LXXX. *Decimancula in Rodulfi Curte*, that is, the right of a Tithe of ſmall value, in a place call'd *Rodulfs* Court, was conſecrated to the Church of *Arras*. And in a confirmation by King *Pipin* of the foundation [i] of the Abbey of *Fulda* (which was made in DCC. XLII.) conſecrations of Tithes to the ſame Abbey, either already made or thereafter to be made, are ſpecially confirmed. Whatſoever it had or thereafter ſhould have *in donis, oblationibus, Decimiſq; fidelium, abſque ullius perſonæ contradictione firmitate perpetua fruatur*, are the words. But theſe kinds of grants it ſeems were not yet in much uſe, and what was of them, I gueſs, might have beginning not long before DCC. years from our Saviour. For if they had been known much before, the precedent of them could hardly have been omitted by *Marculphus*, who lived under King *Clovis* the ſecond about the year DC. LX. and collected carefully the *Formulæ* or precedents of all kinds of Deeds, Conveyances, and grants, that were practiſed in his time; amongſt which he hath many by the name of *Ceſſiones* and *Donationes*, wherein lands and other profits were given to this or that Church, but never mentions any one for the gift of Tenths.

III. If the common tale of *Charles Martell* his taking

[g] *Apud Molanum in* SS. *Belgii in* 18. *Octob.*

[h] *Chronicon Camerac. & Atreb. lib.* 3. *c.* 15.

[i] *Bonifac. Moguntin. Epiſt.* 151. Aliæ ſunt ejuſmodi Donationes *Pipini Regis & aliorum in Regiſtro Vs Eccleſiæ Trajectenſis*, quod ſervatur in Bibliotheca Cottoniana: & vide proximum caput de hac re.

taking away the Tithes, that Churches were endowed with, and giving them to the Laity, about the year DCC. CL. were true, it were authority (both for general payment, and ſpecial endowment in thoſe times) of great antiquity and fair proof: but although that of him be received as a ſtory by divers of late time, yet clearly it can never be juſtified. He was indeed a robber of the Church; but he is not mentioned by any old autor of credit, to have medled with Tithes. He was *Monaſteriorum multorum Everſor*, and *Eccleſiaſticarum pecuniarum in uſus proprios cummutator*, as * *Boniface* Archbiſhop of *Mentz*, that liv'd in his time, complains of him; that is, he took Monaſteries, Biſhopricks, Church-Rents, and poſſeſſions from the Clergy, & prophaned them to lay-hands as a reward of their military ſervice then done for Chriſtianity againſt the *Saracens*, who from *Spain* invaded the Country; whereupon alſo, another fiction is too patiently receiv'd, † that *Eucherius* Biſhop of *Orleans* in a viſion ſaw him damned for it; and that by a ſearch (according as an Angel admoniſhed) in his tomb, it was alſo confirm'd for truth; there being found in it, no relick of him, but only a dreadful Serpent. The firſt autor of this Hobgoblin ſtory ſeems of like credit with him, who-ever he was, that firſt publiſht that the taking of Tithes was *Martels* chief ſacriledge. Tithes in his time were not ſo univerſally as yet annext to Churches, as that they could be the main object of ſuch a ſacriledge. Nor are they ever reckon'd ſo among

* *In Epiſt. ad Ethelbald Reg. Merc.* apud *Gul. Malmesb. lib. 1. cap. 4.* quod tacite Carolo iſt. hoc ibi dicitur, in editis *Bonifacii* Epiſtolis deeſt.

† *Legend. Eucherii* apud *Surium, tom. 1. 30. Febr. & vide Gratian. c. 16. q. 1. poſt Canonem 59. Gregorian.*

those ancients, that largely speak of Lay-mens oppression by defacing whole Monasteries and Bishopricks in the times that next succeeded. Neither is it clear that in *Eucherius* his life, *Martel* was dead. For it is observed and taught by that great and most learned Cardinal [1] *Baronius*, that he liv'd at least ten years after *Eucherius*. How then could *Eucherius* cause his Tomb to be searcht, and there find a Serpent? That's enough, & truth too, that *Boniface* brands him withal for his tyrannical spoiling the Church of her other possessions; *Longa torsione & verenda morte consumtus est*. The rest is only out of the Legend of *Eucherius* his life, which (as other things for the most part of that kind) is too full of falshoods to gain to it self any credit. And some late Canonists that out of his tyranny against the Church, interpret their *Decimæ infeudatæ*, or *feudal Tithes*, are alike in no small error, as in the next Age shall be manifested. For neither was the course then used in taking the Church-revenues for military maintenance, to give them in fee to any Lay-man; but leases for life were made by Church-men, to such as the Prince appointed, of great part of their possessions, whereupon certain small Rents (according to a proportion ordaind by the State) were reserved. Those leases were sometimes upon the Princes request renew'd but upon death of the Lessee, the estate and possession reverted to the Church: all which appears plainly in a Council held in the year DCC. XLII. under Prince *Carloman* son to *Martel*, where

[1] *Tom.* 9. *pag.* 111. & 138 edit. plan iniana. *Sed vero in hac re alii aliter & qui curiosus hic esse velis, præter ea quæ satis obvia sunt, adeas* Adreva. *autoris vetustiss. lib.* 8. de miraculis S. Benedicti, *c.* 24.

where that, which was ſo leaſed, is called according to the phraſe of the time, *Eccleſialis pecunia*, out of every *Caſata*; whereof a ſhilling was to be reſerv'd to the Church or Monaſtery, whence it was granted. That *Caſata* was a quantity of land known certainly from the cuſtom only of every Country, as a yard land, or a hide of land with us. The ſame word, but varied in gender, often occurs in old Charters of our *Saxon* times, eſpecially in the Lieger books of *Worceſter*, and *Abingdon*. And in that of *Abingdon*, a Charter is of King *Edwi*, made [a] to one *Rithric* of *quinque Caſſati terra*, the title or rubrick being *Carta quinque hydarum*; and other there is with the ſame rubrick, the words of the Charter it ſelf being *quinque Manſæ*; whereupon by a Marginal note in an ancient hand, one obſerves thoſe two to denote but the ſame. *Nota* (ſays he) *quod Hida, Caſſati & Manſæ idem ſunt.* But this by the way. Of no leſs falſhood or upon other ground, than this fiction of *Martel*, is their [b] relation which attribute to that Synod under *Caroloman*, theſe words, *Decimas occupatas a prophanis reſtituimus.* Neither courſe nor any ſtory of the time can juſtify it.

[a] *A.D. 956.*

[b] *Cent. Magdeburg 8 &c. Veteri hujuſce aevi ſermonis ignari hallucinati ſunt in ipſum Synodum legerant, fundatas pecuniis Eccleſiarum Eccleſiis reſtituimus. Et ita Codex vetuſt. Mſs. in Theſauro illo Cottoniano.* pecuniis *autem* Decimas *ſignificaſſe opinabantur, ſed perperam & ridiculo. Pecuniæ ubi prædia ſunt.*

IV. For the *Opinions* of Fathers in the beginning of this Age; firſt, S. *Ambroſe* thus in a ſermon of Repentance teaches them due by Gods Law. *Non nobis ſufficit* (ſays he) *quod nomen Chriſtianorum præferamus, ſi opera Chriſtiana non facimus. Decimas noſtras annis ſingulis de cunctis frugibus, pecoribus, &c. præcipit erogandas Dominus.*

[c] *Tom. 5. ſerm. ſer. 2. poſt. Dom. 1 quadrageſimæ, & vide ſerm. in Aſcenſ. Domini.*

Then he cites the Text of that Precept, out of *Moſes*, and goes on with *Novem partes tibi tributa ſunt, ſed qui Decimas dare noluiſtis ad ſolam Decimam revertetis.* Next, he reprehends other offences, and adds, *Quicunque recognoſcit in ſe quod fideliter non dederit Decimas ſuas, modo emendet quod minus fecit, quia eſt fideliter Decimas dare, niſi ut nec pejus, nec minus aliquando Deo offeras, aut de grano tuo, aut de vino, aut de fructibus arborum, aut de pecoribus, aut de horto, aut de negotiis, aut de venatione ſua. De omni ſubſtantia quam Deus homini donat, Decimam partem ſibi reſervavit, & ideo non licet homini retinere illud quod Deus ſibi reſervavit.* Agreeing with him, is S. *Auguſtine* in a whole Homily [4] for the right of them. About Harveſt he made it (if it be his; for it hath been doubted whether it be his or no) on the *XII.* Sunday after Trinity. *Propitio Chriſto*, ſaith he, *fratres chariſſimi, jam prope ſunt dies in quibus meſſes colligere debeamus, & ideo gratius agentes Deo qui dedit, de oſferendis, imo reddendis Decimis cogitemus. Deus enim qui dignatus eſt totum dare, Decimam a nobis dignatur repetere, non ſibi, ſed nobis ſine dubio profuturam.* And grounds himſelf upon that of [5] *Malachy*, the text of *honor the Lord thy God with all thy ſubſtance*, and the like. Then exhorts them, *Decimæ tributa ſunt egentium animarum, redde ergo tributa pauperibus; offer libamina ſacerdotibus*; and admoniſhes, that, if they have no fruits of the earth, they ſhould pay the Tithe of whatſoever they live by; *Quodcunque te paſcit* [6] *ingenium*,

[4] *In ſerm. de Temp. in tom.* 10. eſt vero 219. edit. Antwerp. atque ipſiſſima hujus vocabula habentur in tractatu illo ſuppoſititio B. *Auguſtino* falſo tributo, & *de reſtitudine Catholica converſationis*, inſcripto.

[5] *Cap.* 3. 10.

[6] *i.e. vivendi genus.*

Die

Dei eſt; & inde Decimas expetit vnde vivis; de militia, de negotio, & de artificio redde Decimas, aliud enim pro terra dependimus, aliud pro uſura vitæ penſamus. And then urging more Texts out of the old Teſtament touching Tithes and firſt fruits, and telling them, that the neglect of payment is the cauſe of ſterility and blaſting, *Hæc eſt* (he ſaith) *Domini juſtiſſima conſuetudo, ut ſi tu illi Decimam non dederis, tu ad Decimam revoceris.* And afterward with much earneſtneſs, *Decimæ ex debito requiruntur, & qui eas dare noluerit, res alienas inviſit; & quanti pauperes in locis ubi ipſe habitat, illo Decimas non dante, fame mortui fuerint, tantorum homicidiorum reus ante tribunal æterni judicis apparebit, quia a Domino pauperibus delegatum ſuis uſibus reſervavit. Qui ergo ſibi aut præmium comparare, aut peccatorum deſiderat indulgentiam promereri, reddat Decimam.* Theſe two great Biſhops agree; and from the Law given to the Iſraelites, take their whole doctrine. S. *Hierome* is by ſome uſed for an Author to the ſame purpoſe, and that from his [a] Commentary to the next of *Malachy*, which (after he hath opened the words of the Prophet, being only about the neglect of payment of Tithes and firſt fruits; about the neglect of payment only, not the right of them) are theſe; *Quod de Decimis primitiiſque diximus, quæ olim dabantur a populo Sacerdotibus ac Levitis, in Eccleſiæ quoque populis intelligite, quibus præceptum eſt non ſolum Decimas dare & primitias, ſed & vendere omnia quæ habent, & dare pauperibus, & ſequi Dominum Salva-*

[a] *Ad cap. 3. Malachiæ.*

Salvatorem; quod ſi facere nolumus, ſaltem Judæorum imitemur exempla, ut pauperibus partem demus ex toto, & Sacerdotibus & Levitis honorem debitum deferamus. Who hence thinks, that his opinion agrees with the other two, may as well infer, that he meant alſo, that all men were ſtill bound to ſell all they had, as in the Apoſtles times. He ſpeaks only, as admoniſhing Chriſtians to give their almes to the poor, and *double* [1] *honour* to the Labourer in the Lords ſervice, not binding them at all to offer this or that part, but leaving plainly a Chriſtian liberty; wherein yet, true devotion indeed, as he means, ſhould not be more backward then the Jews were, when they duly paid. He that indifferently reads him, will think no otherwiſe. Neither is S. *Chryſoſtom* at all different from him. He perſwading [a] even labourers and artificers to give bountifully their offerings to the Church for holy uſes, according to the Apoſtolical ordinance in the Churches of *Corinth* and *Galatia*, brings the Jewiſh liberality in their payments of Tenths for an example (beneath which he would not have Chriſtians determine their charity) and ſayes withal, that he ſpeaks theſe things *not as commanding or forbidding that they ſhould give more, yet as thinking it fit that they ſhould not give leſs then the tenth part* (ἀλλ' ἃ ἀξιῶν μὴ ἔλαττον τῆς δεκάτης μοίρας καταθῦναι, as his words are) of all profits gained either from the earth, or by merchandize, or whatſoever juſt imployment either of perſon or eſtate; but not of Uſury and War, which (at leaſt as it was uſed in thoſe

[1] 1 Tim. 5. 17.

[a] Hom. 43. ad Epiſt. 1. ad Corinth. in cap. 16.

thoſe primitive Ages) was held by moſt Doctors [3] of the time, as unjuſt as Uſury; and indeed, where it was juſt, there no part of the gain or ſpoiles was to be given to the Prieſts, by the doctrine of ſome Rabbins, that affirm it as expreſly taught [4] within a Text of *Moſes*. But his exception of Uſury agrees with the Canoniſts of late times, that will not have Tithe paid of unjuſt gain, no more then *the hire of a Whore*, or *the price of a Dog*, was to be brought into the Temple. What is there called the *price* of a Dog, is by *Joſephus* [5] taken for mony given for the lone of a Dog to breed withall. You may add to the opinions of this time that of [6] S. *Gregory*, where he admoniſhes the hallowing of Lent, conſiſting of ſix weeks, out of which, the Sundayes being taken, XXXVI. days remain for the Tenth part of the year, fractions of days omitted: this Tenth of time he would have us give to God, *ut in lege jubemur* (as his words are) *Domino Decimam rerum dare.*

[3] Videſis Lactantium lib. de vero cultu cap. 18. & Tertul. de Corona Militis.

[4] Abrah. Benkab. tan. præcept 101.

[5] Deut cap. 18. 1.

[6] Ibid. cap. 23. 18

[7] Origen. Judaic. lib. 4. c. 7

[8] Homil. 16. in Evang. & diſt. 5. de Conſecrat. c. 16.

V. Some Canons, both Pontificial and Synodal, made for the right and payment of Tithes, are attributed to the ages that fall about the middle of this time. But I have not obſerved above one, that is of any credit, as referd hither: neither was that ever receiv'd into the body or any old Code of the Canons. That one is Provincial, and made in the year D. LXXXVI. in the Council of [9] *Maſcon* (a Biſhoprick in the Dioceſs of *Lyons*) where all the Biſhops of King *Guntherams* Kingdom being preſent, ſpeak of reforming Eccleſiaſtical cuſtoms

[9] Matiſcon. 2. can. 5.

according to an ancient example, and then begin with *Leges Divinæ, consulentes Sacerdotibus ac Ministris Ecclesiarum, pro hæreditaria portione omni populo præceperunt Decimas fructuum suorum locis sacris præstare, ut nullo labore impediti per res illegitimas, spiritualibus possint vacare Ministeriis; quas leges Christianorum congeries longis temporibus custodivit intemeratas. Unde statuimus ut Decimas Ecclesiasticas omnis populus inferat, quibus Sacerdotes aut in pauperum usum aut in captivorum redemptionem erogatis, suis orationibus pacem populo ac salutem impetrent.* Here is no small testimony aswell of ancient Practice in paying of them, as of great Opinion for their being due. But although the whole Council hath to this day remained with the subscriptions of the Bishops to it, yet (what ever the cause was) not so much as any Canon of it is found mentioned, as of received authority in any of the more ancient Compilers of Synodal decrees; notwithstanding, that the fullest of them, I mean *Isidore*, lived long after this Council held, and hath some other Synods of the Continent of *France*, as of *Orleans*, of *Arles*, of *Agatha*. But this he mentions not. The first that published it, was Frier [4] *Crab*, in his Edition of the Councils under *Charles* the fifth. Yet also in some that collected the Canons since *Isidore*, Decrees of elder time than that is, are to this purpose spoken of; as you may see in *Juo* [3] at the end of a Decretal of *Gelasius* that was Pope in the year CCCC.XCII. where these words are annext, *Decimas justo ordine, non*

[4] *Tom. 2. Concilior. fol. 90.*

[3] *Decret. part. 3. cap. 115.*

non tantum nobis, ſed majoribus noſtris viſum eſt, plebibus tantum ubi ſacroſancta dantur baptiſmata deberi. This ſtands continued with the reſt of *Gelaſius*, in the print. But in an old and very fair copy near as ancient as *Juo*, remaining in the Library at *Pauls*, theſe words begin with a coloured capital, as a ſeveral Paragraph; and indeed are not *Gelaſius* his, but Pope *Leo*'s the fourth, who lived above CCC. L. years after. That appears plainly out of the Epiſtle [4] of *Gelaſius* (whereto they are annext) which *Gratian* hath in all, ſaving this, according to *Juo*, yet cites this paſſage in another place [5] by it ſelf, out of that *Leo*, from whom alſo 'tis likewiſe taken by *Anſelm* and *Gregorius Preſbyter*, who have in their collections the reſt of *Gelaſius* his Epiſtle according to *Juo*, as it is noted to the Text publiſht by command of *Gregory* the thirteenth. And in thoſe Decrees [6] of *Gelaſius* that are extant touching the Church-treaſury, or revenue, no mention is of other than of *redditus Eccleſiæ & oblationes fidelium.* A like falſhood is committed by them [7] that attribute a Provincial Conſtitution touching the diſtribution of Tithes amongſt the Biſhops and inferior Miniſters to the firſt Council of *Orleans*, held in the year D. VII. and that by finding ſome words to this purpoſe added to a Canon which in the printed *Juo* [8] hath a marginal reference to ſome Council of *Orleans*. It is moſt certain that the firſt Council of *Orleans*, [9] hath no word of Tithes in it, but ſpeaks of the diſtribution only of ſuch things as *in Altario oblatione*

[4] C. 12. q. 2. & 25. &c.

[5] C. 16. q. 1. c. 45.

[6] *Decret Gelaſii, cap. 20.*

[7] *Ex Binnio in tom. 1. Concil. alii, qui de hac re agunt.*

[8] *De re tlib. 3 cap. 202.*

[9] *Concil. Aurel. cap. 9, 10, & 11.*

tione fidelium conferuntur, and poſſeſſions of other like kind of Church-lands, and according to that, *Burchard* and *Gratian* [a] cite it; who have alſo thoſe words that *Ivo* there hath, excepting only that of Tithes. And ſome other Provincials of the [b] ſame place and age, to the ſame purpoſe ſpeak afterward of *oblationes & facultates*, but not a word of Tithes. All which ſhews plainly that no ſuch matter was ever in the firſt Council of *Orleans*. The truth is alſo that *Ivo* himſelf cites it not out of any Council of *Orleans*, but from, I know not what Council of *Toledo*, as his Ms. copie is, and as it is truly publiſht in the printed book. All that directs to the Council of *Orleans* there, being only the marginal note of *du Molin* a Canoniſt of *Lovain* that ſet it forth. But neither any of *Orleans* or *Toledo* hath it all as he relates it. The truth is; that Canon of his is made up out of two Councils indeed, the firſt [c] of *Orleans* and the ninth of [d] *Toledo*, and agrees well with both, ſaving for ſo much as is expreſly ſpoken of Tithes. That which in thoſe two had been ordaind for offerings and other revenues of the Church, he not unfitly applies to Tithes, being a more known part of that revenue in his time; and thither draws alſo an old Council of [e] *Rome* as if it had ſpoken expreſly of them, and writes all in no other ſyllables then *Burchard* had before delivered with a like title of *ex Concilio Toletano*. But this excuſes not thoſe which make the words of ſuch a collection out of two or three old Councils, applied to a later

[a] C. 10. q. 1. c. 7. *de his*,
[b] *Concil. Aurel.* 3. *cap.* 5 *Aurel.* 5. *cap.* 15.

[c] *Aurel.* 1. *cap.* 11.
[d] *Toletan.* 9. *c.* 6.

[e] *Synod. Rom. ſub Sylveſtro Papa cap.* 4.
Decret lib. 3. *cap* 136.

ter time, to go for a Canon of any one of them. Many such are occuring in *Burchard* and *Ivo* especially, and some in *Gratian*; which are noted upon their credits, and, in some editions, placed in the times to which they attribute them, *licet forsan falso tali sint Pontifici, vel certe tali Concilio per scriptorum incuriam adscripti*, as Frier [7] *Crab* well admonishes. A like falshood is in attributing, out of the same [8] *Ivo*, an expres Canon for the payment of first-Fruits and Tenths, to the Provincial Synod of *Sivil*, held in the year D. CX. in these words. *Omnes primitias & Decimas tam de pecoribus quam de frugibus, divites simul & pauper Ecclesiis suis recte offerant* and a little after: *Omnis rusticus & artifex quisq, de negotio justam Decimationem faciat.* and then, *Si quis autem hæc omnia non Decimaverit, prædo Dei est, & fur, & latro; & maledicta quæ intulit Dominus* (Tu) *Cain non recte dividenti congeruntur.* There is little reason to doubt, but that the reference of that Canon in him, to that Council of *Sivil* is false. The Council of that year and place is extant, whole in divers editions, as it was certified by eight Bishops which were at it; and in that no taste is of any such matter. The old Ms. copy of *Ivo*, of or very near his time, in the Library of *Paul's*, hath it *ex Concilio Spanensi*, the printed book being *ex Concilio Hispalensi*; what *Spanensi* is, I know not: if it were *Spalensi*, it were the same with *Hispalensi*, for which *Spalensi* is always in *Isidores* Councils, as *Spania* is sometimes [9] anciently for *Hispania*; whatever he meant by it, cleerly

[7] *Inperlegom ad Tom. Concil. t.*

[8] *Part. 3. c. 71 Garsias apud Binium in Tom. 2. Concil. ex eo alii.*

[9] *Palladius hist. Lausiaca in Melania & in Concilio Sardicensi subscribens, Ossius ab Spania & Costus ab Spaniis.*

clearly the whole Canon is of much later time; the first words of it also being nothing but the syllables of one of *Charlemans* Laws[7] that was not made till DCC.LXXX. years from Christ; that is, *Unicuique Ecclesiæ mansus integer absque ullo servitio attribuatur*: where *Mansus* is for a Farm or dwelling place, in the same sense as at this day *Manse* is used in the Laws of *Scotland*. Some others like these occurring are mistaken, and you may observe that *Gratian* more warily abstained from using such Canons mistitled; among which also, are these. But the less falshood is to be imputed to *Ivo*, in regard that *Burchard* before him had almost all his syllables, from whom he transcribed; yet that excuses not his negligence committed in not carefully examining his Author; which often causes gross impostures, sometimes proceeding from malice, sometimes from ignorance, to be received as perfect truth; especially by those that cite, without more regard, Provincial Synods absolutely there mentioned for the first of that name, when indeed they are often of far later time. Slothful Readers are soon so deceived. But among the known and certain monuments of truth, till about the end of this CCCC. years, no Law Pontificial, or Synodal (saving that of *Mascon*) determines, or commands any thing concerning Tenths; although very many are which speaking purposely and largely of Church Revenues, Oblations, and such like, could not have been silent of them, if that quantity had been then establisht for a cer-

[7] *Ansegisus Capitular. lib. 1. cap. 91.* quod ipsum etiam habet *Ivo part. 16. cap. 162.*

a certain duty. You may ſee enough in thoſe to which the margin refers you, all made in this part of our diviſion; none uſing other words (to this purpoſe) than *facultates, prædia, πρόσοδοι, παροικίαι, oblationes, vota fidelium, res Eccleſiæ delegatæ*, or *collatæ*, and the like, as the phraſes are in the other firſt CCCC. years: ſome of which kind yet the Canoniſts and others, in Provincial Synods, have in the later ages, compiling their Decrees, made to ſerve as if they had expreſly named Tithes, as you may ſee in that example remembered before out of *Ivo*, and *Burchard*; in that of the Council of *Gangra* in *C.16.q.1.c.57. in Canonibus*; in that of the 29 Chapter of *Gelaſius* his Decree in the Council of *Tribur* held DCCCC.XC. *cap.* 13. in that of the firſt *Oecumenical* Council of *Chalcedon cap.* 17. in *c.*14. of the ſame Synod of *Tribur*; and in that of the ninth Council of *Toledo*, in an old Council of *Cologne*. He that reads thoſe old Canons only, as they are ſo applied, in late autority, to Tithes, might perhaps ſoon think that at firſt they were made ſpecially and by name for them. The matter is plainly otherwiſe. what was ordained in them abou Oblations, is out of them in later-times (Tithes and Oblations being then ſuppoſed of equal right) expreſly extended alſo to Tithes, the word Oblations, as you ſee in thoſe times, being uſual for Tithes alſo when they were given; and *offerre Decimas* was the common phraſe, for *to give Tithes*. About the end of theſe years in a Provincial Synod held at *Friuli*

[a] *Synod. Agath. c.*4. & 7. & 48. *Synod. Rom.*4. *ſub Symmacho PP. c.*4. & 6. *edict Leonis.* & *Anthemii C. de Sacroſ Eccleſ. L.*14. *jubemus. &c. c.*10 *q.*2. *c.* 2. *Novel.* 120. & 131. *Conc. Pariſ.*1. *cap.* 1. *Turonenſ.* 2. *cap.* 26. *Bracarenſ.* 2. *cap.* 2. *Leg Wiſigothorum lib.*5. *&c.*

[b] *Burchard lib.* 3. *cap.* 135. & *Ivo part.* 3. *cap.*201.

in D.CC.XCI. under *Paulinus* Patriarch of *Aquilegia*, the words are, *De Decimis vero vel primitiis (ſalvis ſcilicet allegoricarum rerum myſticis Sacramentis) nihil melius puto dicere quam quod ſcriptum eſt in Malachia Propheta, dicente Domino; inferte omnem Decimam in horreum meum, &c.* and upon that place, the ſuppoſition of the duty being grounded, a Commination is aded, *Quis non timeat vel contremiſcat illam maledictionem quam minatur nolentibus offerre?* The opinion of the Synod is here plainly ſeen; and it is rather a declaration by Doctrine, than a conſtitution by Precept.

VI. But however either this of *Friuli*, or that before cited of *Maſcon*, had their Provincial authority, no Canon as yet was received in the Church generally as a binding Law, for payment of any certain quantity; which not only appears in that we find none ſuch now remaining but alſo is confirmed by the teſtimony of a great and learned French Biſhop (in whoſe Province alſo *Maſcon* was) that could not be ignorant of the receiv'd Law of his time. He lived and wrote very near the end of this firſt four hundred years (I think, in the very beginning of the next) And, in a Treatiſe about the diſpenſation of Church-revenues, expreſly denies, that before his time any Synod or general doctrine of the Church had determined or ordained any thing touching the quantity that ſhould be given, either for maintenance or building of Churches. Becauſe his words are ſpecial auto-

authority also against those counterfeit titles of Canons before spoken of, they shall have place here. *Jam vero* (saith [1] he) *de Donandis rebus & ordinandis Ecclesiis nihil unquam in Synodis constitutum est, nihil a sanctis patribus publice prædicatum. Nulla enim compulit necessitas fervente ubiq; religiosa devotione & amore illustrandi Ecclesias ultro æstuante &c.* This Autor is *Agobard* Bishop of *Lions* (very learned, and of great judgment) and had not so confidently denied what you see he doth, if any Decree, Canon, or Council generally received, had before his time commanded the payment or offering of any certain part. How the autority of that Council of *Mascon* stands with his meaning, I well conceive not. But clearly, he speaks truth in regard of what was generally received. For neither in the *Codex Ecclesiæ universalis*, or the *Codex Ecclesiæ Romanæ*, or *Africanæ*, *Fulgentius Ferrandus*, *Cresconius*, or *Isidores* collection (all which, in those elder ages, were as parts of the body of the Canon law) is once any mention of the name of Tenths. And indeed, that Council of *Mascon*, with all other Church-Laws in [3] *France*, lay a long while neglected before *Agobards* time, as in the age of our fathers that of *Mascon* likewise did. Yet withall, no doubt can be made, but that in most Churches in this time, amongst the offerings of those of the devouter sort, Tenths or greater parts of their annual increase were given, according to the doctrine of those Fathers before mentioned, and those other testi-

[1] *Agobardus Lugdunensis de dispensatione &c. contra sacrilegos*, pag. 276. edit. Massoniana, Parisiis.

[3] *Bonifac. Arch. Mogunt. epist.* 132. *Zacharias PP ibid. Epist.* 143. *&. Willibaldus in vita Bonifac. cap.* 9. *&* 10.

monies. Whereto you may add that complaint of *Boniface* [1] Archbiſhop of *Mentz*, about D. CCL. againſt the Clergy. *Lac & lanas* (ſayes he) *ovium Chriſti oblationibus quotidianis ac Decimis fidelium ſuſcipiunt, & curas regis Domini deponunt.* And in an Exhortation [2] written near D. CCCC. years ſince: *Ille bonus Chriſtianus eſt qui ad Eccleſiam frequentius venit, & de fructibus ſuis non guſtat, niſi prius ex ipſis Domino aliquid offerat; qui Decimas annis ſingulis Pauperibus reddit, qui Sacerdotibus honorem, &c.* Theſe alſo ſhew a uſe of payment among the firmer and devouter Chriſtians in thoſe times. But they were then diſpoſed of diverſly, now you ſee to the Prieſts, now to Abbots, now to the Poor: and when they were offered to Baptiſmal or Epiſcopal Churches, they were received as indefinit Offerings, the quantity whereof was wholly arbitrary, in reſpect of any conſtitution or general Law in uſe. The quantity of the Offerings was arbitrary, but ſome kind of Offering was neceſſary. He that offered not at all, of his fruits, was compellable, it ſeems, by Excommunication (as in the [3] Eaſtern Church; where that compulſion alſo was taken from the Churches autority in the Patriarchat of *Conſtantinople*) but not as yet, he that offered a leſs quantity. And that it was a ſpecial bounty to offer the Tenth, you may ſee in the old *Æthiopian* [4] Maſs, where a diſtinct prayer is for thoſe, *Qui obtulerunt munera ſancta unica, quæ eſt ſuper omnes, Eccleſia, ſacrificium ſcilicet* [5] *primarum Decimarum, gratiarum actio-*

[1] *Epiſt.* 105, *ad* Cuthertum Arch. Cantuarienſem. Attotami *item Epiſtolam ibi videſis num.* 107.

[2] Ms. in Biblioth. Cotton.

[3] *Plut. Nomocan. tit.* 5. & C. *de Epiſcopis & Cleric. l.* 39.

[4] *Biblioth. Patrum, tom.* 4.

[5] Forte legendum *primitiarum & Decimarum.*

actionis ſignum & monimentum. And it ſeems the diſpoſition of the Offerings were ſo in the Patrons power (by the practice of ſome places) that he might aſſign a [1] certainty of them to the Miniſter of his Church, and employ the reſt at his pleaſure (which agrees enough with the right challenged, in the ſucceeding ages, touching Inveſtiture and arbitrary Conſecrations; whereof, more in the next CCCC. years) although in this age alſo ſome Canons [7] of the Clergy ſubjected all new-built Churches to the Biſhops government; but were little obeyed, for meer Church Laws, hitherto. Some ſecular conſtitutions are, that about the year D. C C. L X X X. were made for the payment of Tithes by *Charles* King of *France*, *Italy*, and *Lumbardy*, and afterward Emperour. But becauſe they fall ſo near the end of this part of our Diviſion, and are rather to be accounted amongſt the Laws of his Empire (which began not till near X X. years after; that is, about D. CCC.) then only of his Kingdom, and were afterward received into the Imperial Capitularies, whence we have chiefeſt notice of them; they are purpoſely refer'd into the next CCCC. years, as the firſt Latitude, required in our Diviſion, permits. Neither before them, did any general Law, that yet remains in publick, and is of credit, ordain any payment of Tenths in the Weſtern Church. For in the Eaſtern, never any Law, that I have obſerved, mentions them;

[1] *Concil. 2. Bracarenſ. c. 6. & vide Toletanum c. 2.*

[7] *Concil. Aurelianenſ. 1. c. 13.*

Between about the year D. CCC.
and near M. CC.

CAP. VI.

I. Payment *of* Tithes, *how performed.*

II. Arbitrary Conſecrations *of them* alone (*like Grants of Rents-charge*) *at the* Lay-owners choice, *to any Church or Monaſtery, were frequent; and ſometimes Lay-men* ſold *them to the Church*, Redimere, Decimas.

III. Appropriations *of them* with Churches, *wherein they paſſed as by themſelves, from the Patron ſeverally and directly in* point of intereſt, *The beginning of* Pariſh-Churches. Diſpoſition of the Offerings *received there.* Lay-foundations *of Pariſh Churches. The intereſt that* Patrons claimed. Right of Advowſon. *The ceremony of putting a* Cloth *or* Robe upon the Patron, *at the conſecration of the Church. The uſe of* Inveſtitures, *by which* (*as by livery of Seiſin*) Lay-Patrons gave their Churches. Commendatio Eccleſiæ. Benefice. *None anciently received* the character of Orders, *but when alſo the ordination was for* the title of ſome Church. *Thence came the later uſe of* Epiſcopal Inſtitution. *Whence ſome* Patrons *came to have moſt part of the Tithes.* Canonica portio. *The Clergy and Councils againſt* Inveſtitures.

Their

Their continuance till towards M. CC. *when* Inſtitution (*as it is at this day*) *upon* preſentation *grew common. How* Appropriations *were in thoſe times made, The ancient Epiſcopal right to Tithes, eſpecially in* Germany, *and the* Northern *parts. How* Monks *juſtified their poſſeſſion of* Tithes *and* Pariſh-Churches. *The* right of Tithes *generally denied in* Turingia, *to the Archbiſhop of* Mentz.

IV. *Of* Infeodations *of Tithes into* Lay-hands, *both from the Clergy and Laity; and of their Original.*

V. *Of* Exemptions *granted by the Pope.* Templars *and* Hoſpitalers *accounted no part of the Clergy.*

VI. *The general* opinion *was, that they are due* jure divino: *but this, indifferently thought on, ſeems to have devoted rather* Eccleſiaſtick *or* Poſitive *Law* (*by the* doctrine *and* practice *of the Clergy*) *than* Divine Moral *Law.*

VII. Laws Imperial, *and* Canons Synodal *and* Pontificial, *for the payment of Tenths. The groſs error of ſome that miſtake* Nona *and* Decima *in the Capitularies. The firſt* General Council *that mentions* Tithes.

THe practice found in the time twixt about D.CCC. and M. CC. from Chriſt, conſiſts in ſome *ordinary payments* of Tithes, as in the former ages; in more *frequent conſecra-*

tions of a perpetual right of them alone to any Church, or Monaſtery, at the owners choice; in *Appropriations* of them with the churches in which they were by *cuſtom* or *conſecration* eſtabliſhed; in *Infeodations* of them into Lay-hands; and in *Exemptions* for diſcharge of payment. By the more general *Opinion* of the Church, they are expreſt to be due *Jure divino*; but that is warily to be interpreted out of the general practice clearly allowed by the Clergy. From the beginning of this time *Canons* are very frequent for the right of them. But *the firſt Law* that may at all be ſtiled general for it, was ordained by *Charles* the Great, and received, but little practiſed, through the Empire. Of all theſe in their order.

I. Not only from devotion, but through Eccleſiaſtick cenſure alſo, aided with ſecular power, about the very beginning of this C C C C. years, many Churches in the Weſtern Empire, had the *Tenth paid as a duty*. This may be collected out of an Epiſtle written by *Alchwin* to *Charles* the Great, touching the exaction of Tithes (which he calls *jugum Decimarum* and *plena per ſingulas domus exactio*) of the *Hunnes* and *Saxons*; who being then lately, by *Charles* conquered, had newly received the Chriſtian faith. *Alchwin* there adviſes, that it were better for the Chriſtian cauſe, to omit it amongſt them, till they were grown firmer, and ſpeaks of it as a thing of known uſe among other ſetled Chriſtians. His words are: *Veſtra ſanctiſſima pietas ſapienti conſilio prævideat, ſi melius ſit rudibus*

bus populis in principio fidei jugum imponere Decimarum: ut plena fiat per ſingulas domus exactio illarum: an Apoſtoli quoque ab ipſo Deo Chriſto edocti & ad predicandum mundo miſſi, exactiones Decimarum exegiſſent, vel alicui demandaſſent dari, conſiderandum eſt. Scimus quia Decimatio ſubſtantiæ noſtræ valde bona eſt. Sed melius eſt illam amittere quam fidem perdere. Nos vero in fide Catholica nati, nutriti, & edocti, vix conſentimus ſubſtantiam noſtram pleniter Decimari? Quanto magis tenera fides, & infantilis animus, & avara mens illarum largitati non conſentit? This Epiſtle was written about DCC. XCVII. as the hiſtorical part of it perſwades, and the general Laws, by which that exaction might have been made, are among thoſe which about DCC. LXXX. the ſame *Charles* had ordained in an aſſembly of Eſtates, of which more in the laſt Paragraph of this Chapter. But the execution of thoſe Laws ſoon afterward (as anon ſhall be declared) failing, this practice of payment alſo became to be of rare uſe. And although divers Synods ſoon followed which commanded a Tenth, as what was due of it ſelf to the Church (whence alſo in ſome places a Parochial payment doubtleſs continued, and by preſcription and cuſtom eſtabliſhed a civil right in ſome Churches) yet * the Laity (not much ſubjecting themſelves to any Church-Laws of the time, that toucht their poſſeſſions) frequently exerciſed their arbitrary diſpoſitions, eſpecially of ſuch of them as were not already conſecrated, or by cuſtom, or preſcription ſetled,

* Aliter Eccleſiaſtici. *quod vide prox. Sect.*

ſetled, and therein pretended them due only but as their own choice, either by Conſecration to any Church or Monaſtery whatſoever, or by Infeodation into Lay-hands, ſhould determine. And thoſe alſo which were eſtabliſhed by former Conſecration, Cuſtom, or Preſcription, were very often arbitrarily diſpoſed of alſo by Lay-Patrons in their Appropriations.

Concil. Mog. 16.q.1.c.42. Metenſ. circa ann. 890. cap. 2. Mog circa a. d 846. Benedictus Levita lib. 3. c. 46.

II. For arbitrary *Conſecrations*; the [1] Laws ordained in the firſt of theſe CCCC. years, that ſpeak of *Decimationem proventus priori Eccleſiæ legitime aſſignatus*, and *locus ubi decimæ fuerant antiquitus conſecratæ*, and *Decimæ quæ ſingulis dantur Eccleſiis*, and ſuch more point at the uſe of them. And although, out of any continuance alone of voluntary payment, a kind of Parochial right (which alſo by the Laws [2] of the time every Rector ſhould have enjoyed in the Territory where he diſpenſed the Sacraments) were created, yet Conſecrations of Tithes (not yet eſtabliſhed by a civil title) made to the Church of another Pariſh at the Lay-owners choice, were practiced and continued in force; as may plainly be collected out of an old Law about the beginning of theſe years made (but not put in execution) for puniſhment of ſuch conſecrations, by compulſion of the party to reſtore to the Church the quantity of the Tithe ſo aliened. *Quicunque* (are the [3] words of it) *Decimam abſtrahit de Eccleſia ad quam per juſtitiam dari debet, & eam preſumptioſe, vel propter munera aut amicitiam vel aliam quamlibet occaſionem, ad aliam*

[1] *Leo 4. in c. 16.q.1. de Monachis c.45 & 56. & ſæpe in Capitularibus.*

[3] *Lg. Longobard. lib. 3. tit. 3. cap 7. Hlotharii Imp. & in Addit. 4. ad Capitular. cap. 73.*

aliam Ecclesiam dederit, à Comite vel a misso nostro distringatur, vel ejusdem Decimæ quantitatem cum sua lege restituat. So another was made against Parsons, under pain of deprivation, that they [a] should not perswade Parishioners to come to their Churches, *& suas decimas sibi dare.* With it agrees the complaint made about the same time in the Council of [4] *Pavia*, against such as used to give away their Tithes *aliis Ecclesiis pro libitu.* And many express examples are of such grants made, not otherwise than as of Rent-charges arbitrarily created. Some shall be here added. But, because since the last chapter printed, the Chartulary of the Church of *Utrecht* among many other select monuments to the purpose of this discourse (through the favour of that right worthy and learned Sr *Robert Cotton*, my most honored friend) came to my hands, wherein an observable consecratiō of tithes in the former CCCC. years is preserved; it shall here (not much out of its place) be first remembered. There, in confirmations to that Bishoprick made by *Pipin*, *Charles* the great, and other of the succeeding Emperors, is expressed that some neer ancestors of that *Charles* (as the elder *Pipin*, *Charles Martel*, *Carloman*) had given great endowments to it, and among them, [6] *Omnem Decimam de Mancipiis, terris, & teloniis, vel de negotio, vel de omni re; undecunq; ad partem regiam fiscus, telonium exigere aut accipere videbatur.* It seems it must be restraind to what the grantors possessed in the Territory about *Utrecht*, although no such thing ap-

[a] *Benedict Levita, lib. 7. c. 141.*

[4] *Synod. Ticinens. c. 16. q. 1. c. in sacris Canonibus 56.*

[6] Videsis, ante alia, *diploma ibid. dat. 2. Lodouici 1. Imperatoris*, in quo, quæ superiores concesserant, recensentur.

pears in the divers Chartors there remaining of it. For the following times; in the ſame Chartulary is a commemoration of the poſſeſſions of the Biſhopriek; wherein divers particular Tenths poſſeſſed by ſpecial grant are reckoned; as Tenths of wreck, of treaſure trove, of fiſhing, and a relation is of promiſe made to the Biſhop by one *Gutha* to endow a Church, which he gave to *Utrecht*, with the Tithes of divers Mannors. *In* Beuorhem (the words are) *tradidit* Gutha *Eccleſiam necdum conſecratam in jus & dominium Sancti Martini* (to that Saint was the Church of *Utrecht* conſecrated) *ea videlicet ratione, ut, poſt conſecrationem ejuſdem Eccleſiæ, Decimæ darentur ad ſupranominatam Eccleſiam de villis his nominibus vocitatis*, Beuorhem, Giſſelhem, Heginghem, Schupildhem. And in the year DCCC. LII. *Raginer* Duke of *Lorrain*, for the health of his own ſoul, and the ſouls of his wife, children, and parents, gives to the Abbey of *Vito* in *Verdun*, a whole Town called *Longuion* with the appurtenances, and all the Tithes of the Land that he had within the bounds and precinct of the ſame Town *Villam noſtram* (as the Charter ſpeaks) *quæ dicitur* Longuion *cum omnibus appendiciis ſuis ac Decimis quas in Banno dictæ villæ habebamus*: and one of his ſucceſſors *Rigimer*, by Charter dated DCCCC. XLVI. for like conſideration gave to another Monaſtery, ſeated upon *Moſelle*, all the Tithes within the liberty of the Town where it ſtood, in theſe words, *In perpetuum omnes Decimas quas habeo in Banno prefati oppidi tam*

* Diplomat. 27. & 35 in Stemmat. Lotharingiæ apud *Franciſc. de Roſieres.*

tam in blado, quam in vino, ac aliis rebus: where *Bannus* or *Bannum* is used for the continent within the utmost precinct of the Town; in which sense *Banleuca*, as also *leuga circumjacens*, occurs in the monuments of this Kingdom, as [a] *Banleuca de Arundel*, for all comprehended within the limits or land adjoyning, and so belonging to the Castle or Town, which are both as one to this purpose. So the Monks of *Clugny* in *Burgundie*, founded by *William* Count of *Auvergne* in the year DCCCC X. had Tithes of divers possessions given them, which the phrase of the time stiled [b] *Decimas indominicatas*, in a Charter to them made by *Lewis* the fourth of *France*, in the year DCCCC. XXXIX, and those Tithes were often confirmed to them by Pontificial authority: as by [c] *Agapetus* the second, [d] *Lucius* the second, and afterward by *Urban* [e] the third, in the year M. C. LXXXV. in whose Bull, a recital and confirmation also is of an instrument of *Adhemar* Bishop of *Xantoigne* made to this Monastery, that hath these words in it: *Damus & concedimus vobis Decimas quas à Laicis acquisistis vel acquirere poteritis*, with a command that Laymen in the precinct of their Abbey, should not convey their Tithes to any other Churches. And when the Abbey of *Vendosme* was founded about the year M.L. by *Godfrey Martell* Earl of *Anjou*, [f] the Tithes of the Salt-pits in some part of *Poictou*, were consecrated to it, the like had the same Monastery in some Salt-pits possessed by the Bishop of *Xantoigne*, which although it had enjoyed for

[a] *In placit. de jurat. & assis.* apud Cicestr. 47. *Hen.* 3. *Rot.* 44.

[b] *Biblioth. Cluniacens. pag.* 265.

[c] *A.D.* 948.

[d] *A.D.* 1144.

[e] *Biblioth. Cluniac. pag.* 1447.

[f] *Ex Tabular. Monasterii apud Jacob. Sirmondum in G. Vindocinens. pag.* 66.

threeſcore years, yet the Biſhop began to deny any more payment, and for his own gain, would have maintaind this opinion, *That no Church-lands were to pay Tithes to any Church.* But *Godfrey* Abbot of *Vendoſme* about the year M.C.XX. ſharply corrects him in an Epiſtle, and ſhews that the opinion of all *France* and *Italy*, then was, that although lands charged to any Church with the paiment of Tithes, were poſſeſſed by another Church or Monaſtery, yet the Tithes were ſtill payable Parochially from the one Church to the other. That Abbots words are obſervable, becauſe alſo they ſhew a general practice of payment Parochially by Churches to Churches. Nobis dictum eſt (*ſaith he*) quia dicitis, quòd Eccleſia non debet Decimam dare. Hoc verum eſt, ubi Eccleſia nihil habet in Parœcia alterius Eccleſiæ, ubi verò Eccleſia, in alterius Eccleſiæ Parœcia, poſſeſſionem aliquam habet, vel quippiam quòd Decimari debeat, ibi Eccleſia Eccleſiæ * Decimam reddere debet, ſi illud juſtè poſſidere deſiderat. Hoc tenet *Italia*, hoc tenet *Gallia*; Ibi enim novimus Eccleſias Eccleſiis Decimas reddere, & majores minoribus, & minores majoribus, ubi altera earum poſſeſſionem obtinet in jure alterius, hoc facimus Eccleſiis, hoc Eccleſiæ fecerunt nobis. And according to this had he a Decree for the Monaſtery from Pope *Calixtus* the ſecond. This, by the way here, for payment among the Clergy. But for more arbitrary conſecrations by Lay-men, in the year M.C. XXIV. *Anſellus de Garlanda*

[1] *Goffrid. Vindocinenſ. lib. 3. Epiſt. 41.*

* Ita etiam *Petrus Cluniac. lib. 1. Epiſt. 33. & 36.*

Garlanda, in his foundation of the Abbey of Saint *Mary* of *Gornay* in *France*, among other poſſeſſions gives it [3] *Decimam de Berchorellis*, and *Duas partes Decimæ de Rercheriis*, and *totam Decimam de Pontenz*, and *apud Terciacum medietatem Decimæ*. Many like examples might be added, but one more only ſhall ſuffice, in which the frequency of the practice may be eaſily gueſt at, that is found in a Bull of Confirmation, made by Pope *Innocent* the III. of the poſſeſſions of the Abby of the *Holy Croſs*, and S. *Leufrid*, in the Dioceſs of *Roan*; among which [4] divers appropriated Churches are with their Tithes (and ſo expreſſed: *Eccleſia N. cum decimis*) but beſides them alſo, many Tithes ſeverally granted by divers Barons and Gentlemen to the Abbey, out of ſuch or ſuch lands without any Churches, are confirmed, as *Decimam de feudo Hugonis de Senſci apud Neufuillam. Decimam Wilielmi de Maudit apud Luderuillam, de feudo Wilielmi Pelet apud Amercort. Decimam de feudo Matthæi de Gamichiis apud Manevillam. Duas partes Decimarum de feudo Pagani de S. Luciano, & de feudo Orſelli, & de feudo Flooldi*; and *Decimam de Hendiervilla, & de Seſſeuilla in feudo Autulii: Decimam de Boelio in feudo Roberti filii Willielmi*; *Decimam de Meſuilla in feudo Hugonis de Lace, & Decimam de Buiſon in feudo Hugonis Bigot, &c.* If one Abbey had ſo many arbitrary Conſecrations, who can doubt of the moſt common uſe of them? But if you deſire more examples, look in the places [5] noted in the margin, but eſpecially where anon we have the practice

[3] In Diplomat. Ludouici Craſſ. apud *Andream Quercetan.* in Notis *ad Petrum Abulardum, pag.* 1174.

[4] *Innocent.* 3. *Epiſt. Decretal. lib.* 2. *pag.* 435. edit. Colonienſis.

[5] Vide ſi placet, Chartam *Galſredi Vicecomitis* Monaſterio S. Dionyſii datam apud *Andr. Quercetan.* in notis ad Bibl. Cluniac. pag. 14. Charam *W. Comitis Niuern.* apud eundem pag. 174. *Adelardi Caſtreguntenſis Dom.* apud *Iac. Sirmondum* in notis *ad Goffr. Vindoc.* pag. 95 *Gotsfredi Balloni* apud *Aubert. Miraum* in lib. de Canonicis Collegiis c. 91. *Innoc.* 3. Epiſt. Decretal. lib. 1. pag. 160.

practice of our own [a] Nation by it ſelf declared. Out of them all (being but few in regard of what queſtionleſs might be had in the Records of churches, and Monaſteries, yet remaining in other States) you may find a uſe of that arbitrary diſpoſition till about the year M. C C. when the diſtribution of Tenths alſo to the Poor according to the owners free-will (which I take to be conſecrations, or grants to Monaſteries; for the Monks were uſually called *Pauperes*, and were ſo indeed by their vow) was expreſly complained againſt, as a great fault of the time by Pope *Innocent* the I I I. For he then preaching of [b] *Zache*'s Charity, that conſiſted as well in making reſtitution of what was due to others, as in erogation of almes to the poor, obſerves that he gave of his own, and what was other mens: *Dedit proprium & reddidit alienum*; *Graviter ergo peccant* (ſays he) *qui Decimas & primitias non reddunt Sacerdotibus, ſed eas pro voluntate ſua diſtribuunt indigentibus.* But as a great fault as it was, it was a common one; and being committed by the Laity was uſually allowed in fact by the Pope and the Ordinaries; whatever they thought of it in right. And of ſuch authority was this uſe that an opinion was bred from it among very great men of the Clergy, that, as arbitrary Conſecration was a cauſe of the right of Tithes in a Church where-to they were conveyed, ſo cõtinual payment of many years (which being by divers, of the more devout, faithfully performed, thoſe Clergy-men took as equivalent to a perſonal conſecration of the

[a] *Cap.* 11.

[b] *In ſerm.* 3. *de Dedicatione Templi pag.* 83. *Tom* 1. nec vigorem ejuſmodi donationes obtinere ſancivit ill. *extr. tit. de Dec. c.* 7. *cum. Apoſtolica.*

the Tenths of their increaſe, wherever it were received) had ſo ſetled the perpetual right of the Tithes of any Family, that whither-ſoever it tranſplanted it ſelf, it muſt ſtill ſend its Tenths to the place where before it paid them; as if this continual payment had for ever ſo bound it, that it might not pay them otherwiſe. This was the opinion of divers Biſhops in the Patriarchat of *Grado*, as you may ſee by the ſame Pope *Innocent* his [6] reprehenſion of them, and [a] of others elſwhere alſo. Neither were theſe grants always free conſecrations, but oftimes were made for valuable conſideration given by the Church, which is expreſt in the phraſe [1] *Redimere Decimas*, uſed in the Synodal and Imperial Laws, of this time, made *De Decimis quas populus dare non vult niſi quolibet modo*, or *munere ab eo redimantur*. For, howſoever *Hincmar* Biſhop of *Rheims*, in reprehending [4] the Monks of S. *Denis*, becauſe they were about to take mony of a Parſon for a right of Tithes, adviſed them with *al ſit ut Laici audiant, quod nemo etiam peccatis publicis implicatus in mea Parochia facere audet*: as if he had been almoſt unheard of in that age (he lived about DCCC. LX. that any man had ever took mony for a grant of his Tithes; yet plainly the authority of thoſe Laws ſhew, it was no ſuch rarity, nor was it out of practice about the end of this CCCC. years, as may be collected out of a queſtion diſputed in [6] *Alexander Hales* touching Tithes held by Lay-men, *in territorio alterius Eccleſiæ quæ non poteſt eas redimere*, although perhaps his meaning was only

[6] *Decretal. Epiſt. lib. 1. pag. 83.*

[a] *Extr. de Parochi. cap. 5. ſignificavit.*

[1] *Benedict. Levita Capitular. lib. 5. cap. 46. Conc. Moguni. c. 16. q 7. c. 7. Leges Longobard. lib. 3. tit. 3. cap. 8.*

[4] *Apud. Flodoardum in hiſt. Eccleſiæ Rhemenſis. lib. 3. cap. 25.*

[6] *Summæ part. 3. quæſt. 51. memb. 6. art. 4.*

only of feudal Tithes. But neither did the Laity thus only [f] diſpoſe Tithes not already conſecrated, but in ſome kind alſo (by Appropriations) ſuch as were before eſtabliſhed to Parochial Churches.

[f] Vide etiam quæ in proxima ſectione de *Danis, Turingis*, aliis item adferuntur.

III. In declaration of the courſe of *Appropriations*, it is firſt neceſſary, to know ſo much of the nature of Pariſh-Churches in thoſe times, as without which the Appropriations then uſed cannot be underſtood. Briefly therefore, for Pariſh-Churches; it is plain that as *Metropolitick* Sees, *Patriarchats* (*Exarchats* alſo in the Eaſtern Church) and *Biſhopricks*, thoſe greater dignities, were moſt uſually at firſt ordained and limited [g] according to the diſtinction of ſeats of government, and inferior Cities, that had been aſſigned to the Subſtitutes or *Vicarii* of the *Prafecti-pretorio* or Vice-Royes of the Eaſt and Weſt Empire; ſo were Pariſhes appointed and divided to ſeveral Miniſters within the Eccleſiaſtick rule of thoſe dignities, according to the conveniences of Country-Towns and Villages; one or more or leſs (of ſuch as being but [h] ſmall Territories might not by the Canons, be Biſhopricks) to a Pariſh; the word *Parœcia* or *Pariſh* at firſt denoting a whole Biſhoprick (which is but as a great Pariſh) and ſignifying no otherwiſe than *Dioceſs*, but afterward being confined to what our common language reſtrains it. The Curates of thoſe Pariſhes were ſuch as the Biſhop appointed under him to have care of ſouls in them, and thoſe are they which the old Greek [i] Councils call περιοδευτὰς ἐπισκόπους or οἱ ἐν ταῖς χώραις

[g] Videſis *Anaſt. & Steph. PP. in Epiſt. Decret. Hincmar. Rhemenſ. in Opuſc. 55. c. 25.* & Conſulas inprimis *Joſephum Scaligerum in Notitia Galliæ*, & *in Epiſtolis pa* 247 editione Francofurtana Ph. Berterii, Diatribas in Pithœan.

[h] *Concil. Sardic. cap. 6.*

[i] *Neocæſar. ca.* 8 & vide *Antiochen. cap* 87 & 89.

χώραις, or, ἐν ταῖς κώμαις πρεσβύτεροι, that is, *Presbyteri* [a] *Parochiani*, within the Bishoprick, neither were the *Chorepiscopi* much different from them. These had their Parishes assigned them, and in the Churches where they kept their Cure, the offerings of devout Christians were received, and disposed of in maintenance of the Clergy and relief of distressed Christians, by [b] the *Oeconomi*, Deacons or other officers thereto appointed under the Bishop. Neither had those Parochial Priests at first such a particular interest in the profits received in Oblations as of latter time. All that was received whersoever in the Bishoprick, was as a common Treasury to be so [c] dispensed. One part was allowed to the maintenance of the Ministry (out of which every Parochial Minister had his salary, according to the monthly pay spoken of in the first CCCC. years) another to the relief of the poor, sick and strangers, a third to the reparation of Churches, and a fourth to the Bishop: so it appears by the ancient [d] Canons, if we may at least herein conjecture of the use of the time, by what they have ordained. And it is like enough to have been no otherwise, so long as these Parochial functions were so personal, that they were not as now, so annext to foundations and endowments, but rather exercised as by messengers, sent from the Bishops who had no such reference to Lay-Patrons, as they that afterward came in upon Investiture or Presentment have had, but only were protected by some appointed by the State for [e] ἔκδικοι, or *Defensores*.

[a] *Leg. Alaman. cap.* 13.
[b] Vide *Concil. Gangr. Can.* 67. & *Chalced. Can.* 204.
[c] Vide *Concil. Antioch. c.* 103 & 104. & *Urban. c.* 12. *q.* 2. *c.* 26.
[d] *Synod Rom. sub PP. cap.* 5. & *Gelasii Decret. cap.* 27 atque hic divisionis modus in usu erat vetustioribus istiusce ævi Christianis; quod innuit *Walafridus Strabo* (qui floruit a. d. 840) *lib. de reb. Ecclesiast. cap.* 17. vide *Grat. c.* 12. *q.* 2. *c.* 26. & *seq.*
[e] Vide si placet, *Theodor. Balsamon in* Μελέτησις *pag.* 454. post. *Con. Cart. Can.* 7. *Justinian. Novel* 15. & *Capitular. Carol.* & *Ludovic. lib.* 5. *cap.* 1. & *lib.* 7. *cap.* 508

sores of the Church, as they called them, the name of *Defensores* being in the primitive time, for this and other purposes, given to such Protectors, ὅπως ἂν ἀπαλλάξαιεν κακῶν τοὺς ἀδικουμένους, *in regard of their assistance and help to such as suffered injury*, as *Justinians* words are. And in the first ordination of this Hierarchy of Bishops and Parochial Priests, it seems in some Lands wherewith the Bishoprick was endowed, the Churches were erected, in which the Bishop had a kind of right of advowson; who, taking on him the general care of his Diocess, ordained Incumbents in every of them, and the oblations there received were of the Churches common treasure, and so to be divided and disposed of quadripartitly. But that quadripartit division was chiefly in the Diocess of *Rome*. For by some [a] Canons of the *French*, *Spanish*, and some other Churches, it was tripartit, and had other differences. But all this in the primitive times, and from the first establishing of Christianity by a disposition of the Hierarchie, till about D. years from Christ, it seems, it continued. And such kind of Parishes only were those spoken of in that Epistle of Pope [*] *Denis* the I. about C C L X. if at least that Epistle be not a fiction; if it be, then our Canonists do ill to use it at all, if not, then plainly they abuse it, where they pretend in it an original of such kind of Parishes, as since for the most part have had their beginning from lay-foundations. But not long after such time as lay-men began to build and endow Parish-Oratories or Churches

[a] *Concil. Aurel. 1. cap. 13. Toletan. 9. cap. 6 Bracar. 2. ca. 2.* & vide *Ansegis. Capitular. lib. 1. c. 87.* & *Addit. ad Capitular. 4. cap. 37.* & *c. 9. q. 3. 1. c.* & *seqq.*

[*] In *Epist. Decretal.* & in *c. 13. q. 1. c. Ecclesias.*

ches in their Lordſhips, and in them place or inveſt Chaplains (ordained, that is, made Prieſts by the Biſhop, but not inſtituted by Preſentation as at this day) that might receive the offerings of ſuch as repaired thither for holy ſervice; that former kind, of making a common treaſury in every Dioceſs, was diſcontinued, and the Chaplain or Incumbent, acknowledging the Lord of his Churches Territory for Patron, (not much otherwiſe than, as in the ancienter courſe, every Parochial Prieſt did the Biſhop that collated to him) received now the profits that roſe out of Chriſtian devotion, to a particular uſe of his own Church, the Canons nevertheleſs ſaving the fourth part to the Biſhop. For, that Epiſcopal right grew afterward to be ſo eſtabliſhed by the received [4] Canon-Law, that till this day, where preſcription of XL. years excludes not, the fourth part of all Oblations and Tithes are, by it, due to the Biſhop, and ſome [5] Canoniſts make it as a duty ſucceeding in lieu or proportion to the *Tenth of the Tenth* that was payed by the Levites to their Prieſts. But however the Canons were (in which alſo it had been often conſtituted, that every Church and the profits thereof ſhould be ſubject to the Biſhops diſpoſition, as to the only immediate ſuperior; and in ſome [7] that the founder ſhould be utterly excluded from all intereſt) yet divers lay-Patrons in thoſe elder times had, or at leaſt challenged, in the Oblations received from Chriſtian

[4] *Extr. de Offic. jud. cap. 16. conquerente, & de præſcript. c. 4. de quarta.*

[5] *Panormit. ad tit. de Decim. c. 1. n. 3.*

[7] *Diſt. 96. & c. 16. q. 7. paſſim.*

[1] *Diſt. cap. 26. pia mentis.*

devotion in their Churches, an intereſt ſomewhat like to what more anciently the Biſhop had in the offerings made at the Churches wherein he only placed the Miniſters. Whence the erecting of Churches became, amongſt ſome, to be rather gainful than devout, for the Patron would arbitrarily divide to the Incumbent, and take the reſt to his own uſe. This is manifeſted in the II. Council of *Bracara*, held about D. LXX. where a Canon forbids the conſecration of Churches built not *pro ſanctorum patrocinio*, but *ſub tributaria conditione*, as the uſe was of ſome places; that is, to the end that the lay-founder might have half or other part of the Oblations. *Si quis*, are the words, *Baſilicam non pro devotione fidei ſed pro quæſtu cupiditatis ædificat, ut quicquid ibi de oblatione populi colligitur, medium cum Clericis dividat, eo quod Baſilicam in terra ſua quæſtus cauſa condiderit, quod in aliquibus locis uſque modo dicitur fieri, Hoc ergo de cætero, &c.* And ſuch a practice is titled a cuſtome of the ancient times in an Epiſtle[a] attributed to Pope *Damaſus*. And in the IX. Council of *Toledo* about the year DC. LX. Lay-Patrons are forbidden to uſe *juris proprii poteſtatem* in Church-goods or lands, as if great pretence in thoſe times had been of their right in diſpoſition of them; and, in the Imperial Capitularies of about the year DCCC. divers times proviſion is made againſt ſuch lay-men as thought it had been their right only to diſpoſe of the endowments and offerings

[a] 1. C. 10. q. 1. c. 15.

ferings of such Churches as they were Patrons of, and that the Bishop should be wholly excluded. But it fell at length that, without much difficulty, the Church, what through Constitutions, what by their Doctrine, had remedy for this usurpation upon the Offerings solemnly consecrated to the Priests at the Altar. And in the following times it had been abstained from as the plainest part of sacriledge. Yet nevertheless, another interest, that is, the interest of Patronage, and a right of disposition of the Temporal endowments, which the Lay-founders first challenged in their new-erected Churches, which was a right of Collation or Investiture, whereby the Incumbent might receive full possession without aid of Bishop or other Church-man, could not so easily be gotten from them, although some [t] Imperials were provided against it. For although no lay-man could, of himself, make any building to be a Church, without the Bishops consecration of it (as even among the Gentiles, it was carefully foreseen, that in all new Temples [s] one of the Priests solemnly holding a Pillar of it in his hand, should make the dedication) yet it being consecrated and endowed the Lay-Patron, in these ancient times, took upon him not only the *Advocationem*, or advowson (that is, the defence or patrociny of the Incumbents title; as *officium advocationis* is used in the [u] Imperials) but also the Collation by Investiture without presentation at every

[t] *Capitular. Caroli & Ludouici lib. 7. c. 213.*

[s] *Cicero in Orat. pro domo sua.*

[u] *Vlpian. ff. de rei vindicationē. L. 54.*

every vacancy. And the right of advowſon (whereto the other of Inveſtiture in thoſe times was annext) in ſome places the Biſhop confirmed to him by putting a Robe or ſuch-like on him at the dedication, as the example [a] is of *Ulrique* Biſhop of *Auſpourg*, in one of his dedications, about DCCCCL. where *Conſecratione peracta* (as the Author ſays) *doteque contradita, comprobato illic Presbytero, altaris procurationem commendavit, & Eccleſiæ Advocationem firmiter legitimo hæredi. Panno impoſito, commendavit.* From this right of Collation and Inveſtiture reſerved by Lay-Patrons, the practice came to be, that Pariſh Churches and all the temporalities annext to them, as the Glebe and Tithes (and what elſe in ſucceeding times became to be endowments) were at every vacancy confer'd by the Patrons to their new Incumbents, by ſome ceremony, not differing from our livery of Seiſin (which is nothing but Inveſtiture; for Inveſtiture [b] is only the immediat giving of ſeiſin or poſſeſſion) with theſe words, [c] *Accipe Eccleſiam*, or the like. Neither upon preſentation did the Biſhop inſtitute, as of later time the uſe had been; & whereas, at this day, nothing paſſes out of the Patron, or veſts in the Incumbent, in point of intereſt (the preſentation being only as a nomination, and the intereſt and poſſeſſion being immediatly had from the acts of the Biſhop and Archdeacon) it was far otherwiſe in theſe elder times. For the Incumbent as really, as fully, and as immediatly received the body

[a] *Anonym. in vita S. Udalrici cap. 7.*

[b] *Ivo Carnotenſ. Epiſt. 41. & paſſim Juriſperiti.*

[c] *Petrus Damian. lib. 1. Epiſt. 13. ad Alexandr. 2.*

body of his Church, his Glebe & what Tithes were joyned with it, in point of interest from the Patrons hand, as a Lessee for live receives his Lands by the Lessors livery, whence by the phrase of the time that kind of giving a Church was stiled [1] *Commendatio Ecclesiæ*, that is, the Lay-Patrons *committing* or *livery of the Church* and the endowments to the Incumbent, to take care of and dispose as an Usufructuary of what the Patron was Proprietary, or as a Tenant of that whereof he was in the reversion, and in such sence is *Commendo* used, joyn'd often with *trado*, in *Tully* as, *Commendo, ac trado*: and hence came the *Commenda*, wherein not the Title, but possession, profits, and custody of the Church is cõmitted; and the difference is obvious between *Ecclesia titulata* & *commendata*, *commendata* having chief reference to the possessions. And hence was the name of *Benefice*, for a Church and endowments so given; for as such lands or annuities, as in the Empire were given for perpetual salaries to military persons, had the name of *Beneficia*; so, what was thus conferred upon spiritual souldiers in the Church, had afterward the like title. But, at this Commendation of the temporalities so made only by the Patron, the Bishop indeed had the usual consecration of the Incumbent, but nothing at all to do with the dispositiõ of the Church or endowments. For the Law then being that Orders could not be given ἀπολελυμένως, [2] *sine titulo*, or *absolutely*, but only when a Title of a Church, or some

[1] *Benedict. Levit. lib. 5. cap. 83. & Addit. 4. c. 37. & Synod. Rom. c 16 q. 7. c. 33. Monasterium.*

[2] *Concil. Chalcedon. Can. 114. & dist. 7. ide si placet. extr. de præbend. cap. 16. cum secundum.*

ſome ſpecial Miniſtery was at the ſame time aſſigned to the ordained Clerk; all orders otherwiſe given being void, ſo that at every new Inveſtiture a lay-Patron could not have (as at this day) a Clerk always ready made for his Church; it was a neceſſity that for every new Inveſtiture (unleſs a reſignation of ſome other Church had preceeded) the Biſhops Ordination or Conſecration was to be uſed, which afterward grew to be what now is Inſtitution. And although the character of Orders were general, in ſo much that, as now alſo, he that received them was an univerſal Prieſt, yet, in every Ordination, ſpecial expreſſion was made of the Title of the Church (that is, the Saint, Angel, or Martyr, to whoſe memory the Church was dedicated; in words [7] to this purpoſe: *Eligimus in Ordinem Presbyterii &c. ad titulum S. Mariæ, ad Eccleſiam quæ eſt in pago illo &c.*) to denote that the end of it was, that the Ordained ſhould there exerciſe his ſpiritual function, and not leave it during life, for which a Law was made alſo that ſuch as were to be cõſecrated or ordained by the Biſhop, before they were ordained by the Patron in the Church (for the Inveſtiture or Commendation was alſo an Ordination; and by the name of [8] *Ordinatus* alſo, was he denoted that was ſo inveſted) ſhould either by oath or caution ſecure their continuance upon that Church only. So you muſt [9] underſtand that in the Capitularies, *Ut Presbyteri qui in Titulis conſecrantur, ſecundum Canones, antequam Ordinentur, promiſſionem ſtabilitati-*

[7] *Ordo Romanus de Diviſis Officiis.*

[8] Videſis Duarinum *de ſacris Eccl. Miniſteriis lib. 1. chap. 16.*

[9] *Levita lib. 5. cap. 108.*

litatis loci illius faciant; the uſe then, it ſeems, being, that Clerks ordained would at their pleaſure reſign into the Patrons hand (for it is probable, that reſignation [3], in thoſe times, into the Patrons hand, without aſſent of the Biſhop, like ſurrender of particular tenants to them in the reverſion, was in practice, and deveſted the title of the Church; although at this day, by the Canon-Law, it be grown cleerly otherwiſe) and being then capable, without new ordination of the Biſhop, of any Spiritual Function, would take Inveſtiture of other Churches without conſent or knowledge of the Biſhop; againſt which alſo, ſome Laws [4] were made in the beginning of this C C C C. years, but, with the reſt, little obeyed. From this uſe of Commendation, or Inveſtiture, it came alſo, that if an Advowſon had deſcended in coparcenery, the Church had as many incumbents as the parceners had parts; *Singulæ partes, ſingulos habebant Presbyteros*: Every of them giving an intereſt in a part, according as they might have done of any other inheritance deſcended unto them. Nor (as it ſeems) from other original then this challenged and practiſed intereſt, came thoſe *droicts honorifiques des Seigneurs es Egliſes* (whereof you may ſee the Treatiſe lately written by *Matthias Mareſhall*) and the cuſtome yet remaining in divers places, eſpecially in *France*, whereby the Incumbent [6] hath not for himſelf above a

[3] Vide *eundem, lib. 6. cap.* 197. *& lib. 7. cap.* 173.

[4] Vide *eundem, lib. 6. cap.* 26. 43. *&* 82.

[5] *Addita ad Capitul. cap.* 25. *& Concil. Lateran. ſub. Alex.* 3. *Can.* 17. *&* vide *Append. ad diſt. Concil. part.* 15. *cap.* 7.

[6] Vide *extr. tit. de Prebend. c.* 30. *extirpando & de jure patron c.* 23. *prætores. & lib.* 6. *tit. de Prabendis, cap.* 1. *juſ. cæſii, &* le Code des Deciſ. Fortenſ. *Deciſ.* 15. *lib.* 1. *tit.* 10.

ſmall part of the Tithes, at the arbitrary diſpoſition of ſome ſpiritual Patron, who takes the reſt (according to this anciently practiſed intereſt of Patrons) to his own uſe. What is ſo allow'd to the Incumbent, is ſtiled his *Canonica portio*; which was, I think, [1] reſerved to him in ſome Grants of the Archbiſhops of *Saltzburg* as Patrons, of their Tithes, to the Abbey of *Richerſperg* in the year M. C. X L I V. Neither let any man out of this, or from other authority in [2] Canons, gather, that all Tithes were arbitrarily diſpoſed of by the Biſhop in theſe middle times; which yet is falſely affirmed by ſome that raſhly think, what-ever a Canon mentions (becauſe ſome of the Clergy would have had it ſo) was a practice of the time. But the contrary plainly and frequently appears, only as in the primitive times, when Pariſhes were not diſtinguiſhed by limitation of Eccleſiaſtick profits, but only by the Miniſters Function, the Biſhop alone challenged, and frequently had, all Offerings or καταρχαὶ, as appears in thoſe old Canons before mentioned, and eſpecially in thoſe of the Council [3] of *Gangra*, made againſt the *Euſtathians*; ſo alſo after payment of Tithes grew into more uſe in theſe middle times, he pretended by the Canons (as in the example which we anon have of the *Turingians*, and thoſe of *Holtz*,) a right to Tithes through the whole Dioceſs, as his pariſh, where no Parochial right was ſetled in

[1] *Chronic. Richerſperg. pag.* 276. & 204.

[2] Vide *Synod. Auguſt. ſub Joann.* 9. *An. D.* 904. ut omnis decimatio &c. & *Synod. Anguſtanam an.* 952. &c

[3] Vide *Concil. Gangr. cap.* 7. & ad ea *Zonaram.*

XUM

in several Rectors of Parishes. But clearly, in such as were once, according to secular Law made proper to this or that Church, he had not, even by the Canon-Law that was in use, more than his fourth or other part, varied by several customes; and by customes or [5] prescription he lost it. Neither was this practice of Investitures, only in bestowing of Parish Churches. In Monasteries and Bishopricks the like was; but the increasing power of the Clergy took it away wholly in the less Churches (saving that in collations of free Chappels, Prebends, or other Benefices, without parochial Cure, *according to* the *Droict de Regale* of the Kings of [6] *England* and [7] *France* especially, in some kind it hath remained) and much altered it in Bishopricks and Monasteries. It was in substance forbidden in the eighth General [8] Council of *Constantinople*; then by Decree in the Council of *Rome* under *Gregory* the seventh, about M. LXXVIII. in words, which as well shew how the use of Investitures at that time remained in many places; for some few years before, it appears, they were very common among the Laity, and scarce taxed by the Clergy) as also what opinion the Church had of them: *Quoniam Investituras Ecclesiarum contra Statuta sanctorum Patrum* (that is, against the many Canons made against Laymens disposition of Church-revenues) *à Laicis personis in multis partibus, cognovimus fieri, & ex eo*

[5] *Extr. de Præscript. c. 4. de quarta.*

[6] Vide 19. *Ed.* 3. *tit. Quare impedit*, 60.

[7] Vide *I. Ferhault de privileg. Regni Franciæ, prin.* 8. & *Rebuff. prax. Beneficiorum, cap. de Reservationibus*, & *Serum* en 2. Vol. des playdoiez en l'arrest touchant la Chappelle S. Nicholas en l'Esglise S. *Brice* de Colchi, Diocese de Noyon. *p.* 209. & *Vol* 1. *pag.* 198. & *Petr. Gregor in Syntagm. juris universi, lib.* 17. *c.* 7. & 8. & *Pasquier. Recerch. liv.* 3. *c.* 31. & 32.

[8] *Actio* 12. *Can* 22. *A. D.* 871.

eo plurimas perturbationes in Eccleſia imo ruinam ſanctæ religionis oriri, ex quibus Chriſtiana religio conculcatur; Decernimus ut nullus Clericorum Inveſtituram Epiſcopatus, vel Abbatiæ, vel Eccleſiæ, de manu Imperatoris vel Regis vel alicujus Laicæ perſonæ, viri vel feminæ, ſuſcipiat. And in the general [6] Council of *Lateran*, held in M. C. XIX. under *Calixtus* the ſecond, chiefly againſt Inveſtitures, one Canon is; *In parochialibus Eccleſiis Presbyteri per Epiſcopos conſtituantur, qui eis reſpondeant de animarum cura, & de iis quæ ad Epiſcopum pertinent. Decimas & Eccleſias à Laicis non ſuſcipiant abſque conſenſu & voluntate Epiſcoporum, Et ſi aliter præſumptum fuerit Canonicæ ultioni ſubjaceant.* The like was in the next general Council under *Innocent* the ſecond; and very many other Pontificial Decrees [7] were to the ſame pupoſe. For by this time, through the uſe of giving of Orders without Tithes of Churches (againſt the old [8] Canons) and Reſignations into lay-hands; every lay-Patron eaſily could have a Clerk capable of his Benefice, and ſo inveſt him, without ſo much as notice of the Biſhop. And, notwithſtanding thoſe Decrees, both Oecumenical and Pontificial, that practice of Inveſtitures could not preſently be taken from the Laity, although ſoon after that general Council held under *Innocent* the ſecond, in M. C. XXXIX. it began to be leſs frequent, and Inſtitution upon Preſentation here

[6] Extat *in Romanæ editionis* tom. 4. Uti & illud *ſub Innocent.* 2. celebratum, & in *Vaticana* ſervantur Mss. jam vero etiam in nupera *Binii* editione reperiuntur.

[7] Habentur apud *Gratianum diſt.* 63. & c. 16. q. 7.

[8] *Diſt.* 70. c. 1 & 2.

here and there ſucceeded it. But not long before that Council, it was much complained against by the Clergy, and ſtiled by [a] ſome of them, *Hæreſis inveſtituræ*; others of them by no means admitting it to be an Hereſie, but only an uſurpation of the rights of the Church, which ſhould not be diſpoſed of by lay-hands. Beſides other occurrences of Inveſtitures in Epiſtles, Councils, and Story of about M. C. you may ſee eſpecially the Epiſtles twixt *Ivo* Biſhop of *Chartres*, and *John* Archbiſhop of *Lyons*, with others of *Godfrey* Abbot of *Vendoſme* (all written about M. C. XXX.) in which it is largely diſputed of; and in them it appears plainly, that although the Church would never have permitted it to the Laity, and did alſo ſometimes extort renuntiations of it, yet the Pope often regranted the right of it in *France* and *Germany* to ſuch as had renounced it. Whence alſo *Ivo* concluded, that it was but a civil right belonging (by their Canons) to the Church, and no ſuch thing, as of its own nature, could not be enjoyed by the Laity. But the Canons gaining force, as the Papal power encreaſed, at length, about the end of this CCCC. years, it became wholly out of uſe, for not till then was it left off; and that the courſe of Inſtitutions upon Preſentations was not before commonly practiſed (eſpecially in the caſe of lay-Patrons) appears by divers [b] Canons relating as much, to which I refer

[a] Vide *Goffrid Vindicinenſ. lib.* 3. *epiſt.* 11. & *Ivonem Carnot. Epiſt.* 235. 238. & 239.

[b] *Concil. Generál. ſub Alex.* 3. *can.* 9. & 14. *Extr. de jure Patron. c.* 4 10. 21. & 111. *de Inſtit. c.* 1. & 111 *de Præbendis c.* 31. *in Lateranen.*

refer you, and more hereof in the Engliſh uſe. By reaſon of theſe Inveſtitures (wherein the Glebe, Tithes, and all Endowments of the Church as well as the Church it ſelf, in point of Intereſt or eſtate, paſſed from the Patron, and at every vacancy were in him as in the only proprietary of them) when Appropriations in theſe ancient times were made, it was not only the Church it ſelf, or the *Titulus Eccleſiæ* (for that alſo, once by conſecration created, was given by lay-Patrons, when the Clerk had already his Orders) or the patronage, that was directly in point of intereſt conveyed, but withall the Glebe and Tithe made parochial by Grant, Foundation, or Cuſtome. And the title of the Church, the Monaſtery (according to the patrons proviſion in many Appropriations, and in others, at their pleaſure) ſtill gave afterward by Preſentation of a Clerk, whom the Biſhop inſtituted. For the Clergy, except Biſhops and ſuch as had Epiſcopal right by priviledge, gave [3] uſually by Preſentations, theſe Inveſtitures being altogether againſt their Canons, and but like the Biſhops Collations. Neither did any ſuch thing follow upon ſuch Preſentation as Diſappropriation, in regard of the Endowments or Temporalties, for ſuch was the nature of the Appropriations, that the Church remained notwithſtanding preſentative, and the Incumbent, that came in by preſentation, had the Church only under

[3] Ad hanc rem vide c. 16. q. 1. & 6.

under the name of Vicar, and in anothers right and received the Tithes and the profit of the Glebe, no otherwiſe than to the uſe of the Monaſtery, in which the Appropriation had ſetled them, as Inveſtiture ſhould have done in an Incumbent. Neither was the Title of the Church, and the Endowments, ſo entire a thing, but that according to the Patrons intereſt and will they might by the Law then in practice be ſo ſevered. The ordinary inſtruments of ſuch Appropriations plainly ſhew it. And all the maintenance of the Incumbent was at the bounty of the Monaſteries allowance. And it is expreſt uſually in old Inſtruments of Appropriations, that ſuch a Clerk ſhould anſwer to the Biſhop *de ſpiritualibus, vobis autem* (to the Monaſtery) *de temporalibus.* Which is complained againſt in that of *John* of [a] *Salisbury: Perſonatus quoſdam introduxerunt, quorum jure ad alium onera, ad alium referuntur emolumenta.* Herewith agrees the general [b] Council of *Lateran*, held in the year M. C. L X X X. where the ancient courſe of filling Churches, thus appropriated to Religious Houſes, is commanded to be thenceforth better obſerved. *In Eccleſiis ſuis quæ ad eos pleno jure non pertinent* (that is, thoſe which they held both exempt from Epiſcopal Juriſdiction, and in them had the right of Inſtitution and Deſtitution by Priviledge) *inſtituendos Presbyteros Epiſcopis præſentent, ut eis quidem de plebis cura reſpondeant;*

[a] *De Nugis Curialium, lib. 7. c. 17.*

[b] Ita etiam extr. tit. de Privileg. c. 2. Sect. in Eccleſiis. Concil. General. A. D. 1215, cap 61. extr. de Prob. & dign. c. 31. & Luc. 3. in App. ad Concil. Lateran. de an. D. 1180. tit. de jure Patronat. cap. 24. & Roger. Houeden. in annal. fol. 460. b.

ſpondeant; ipſis vero de rebus temporalibus rationem exhibeant competentem. For however by the Canoniſts of later time, this in the Council, and in our Appropriations, be underſtood variouſly, and for the moſt part, of Churches whereof Religious Corporations had only the patronage, and according to their Law, no property; whence alſo they interpret that *rationem competentem* for an account only which the Patrons might exact, but not for a denoting of the property or right that the Religious Houſes had in the profits; yet doubtleſs in thoſe times, that *ſuis Eccleſiis* in this and the like Canons had reference to Churches Appropriated only, or to ſuch as were poſſeſſed by equal right, to expreſs Appropriations. And although *Innocent* [a] the fourth, being of the ancienteſt Writers on the Decretals, rather juſtifies that more common opinion (whereof you may have moſt ſpecial declaration in our [3] *Lindwood*) yet others, and as great Lawyers of that time, expreſly ſuppoſe, that the Temporalities are by that paſſage underſtood due and payable to the Monaſterie, and that not an account only was to be made of the diſpenſing of them. Expreſly [4] *Hoſtienſis* upon the difference of their Churches held *pleno jure*, and not *pleno jure*: *Ubi pleno jure non pertinet, tunc habet ibi Monaſterium temporalia & repreſentationem Presbyteri Vicarii tantum, &c.* Whereas if it were theirs *pleno jure*, they had alſo

[a] Vide *eum ad tit. de Prab. c. in Lateranenſi* 31. & *tit. de Privileg. 2. Sect in Eccleſiis* editione Venet.

[3] *Conſtit. prov. tit. de locato & conducto cap. licet bona verb. aſſerunt non ligari.*

[4] *In ſumm. tit. de Offic. Ordinarii, c ſunt autem.*

ſo Inſtitution and Deſtitution to themſelves. And [a] elſe-where likewiſe he makes enjoying the Temporalities to be denoted by, *Pro rebus Temporalibus debita ſubjectio.* And ſo *Durand* (whom they call [b] *Speculator*) in his preſident for the Libel, whereby a Monaſtery having founded a Church, was to demand the Temporalities, thus propoſes the ſuit, *Cum Eccleſiam illam Monaſterium à fundatione habuit*, (for in thoſe ancienter times the right of Foundation of a Church and Appropriation were as [c] one to Religious Houſes) *& ſic per conſequentiam in temporalibus ſibi debeat reſpondere, petit temporalia in ipſa Eccleſia ſibi adjudicari, &c.* Is it not then plain, that *reſpondere in temporalibus* denotes the taking of the Temporalities to the Monaſteries uſe? *Hoſtienſis* and *Durand* are better authority to prove how the Law was anciently taken, then a Cart-load of the later and more barbarous. Other reaſons might be brought to prove this, but I preſume no man will doubt it that knows how to examine it. I only add this obſervation, to help clear it, out of a Bull of Pope *Lucius* the ſecond, to the Prior and Canons of *Kenelworth*, wherein licence [*] is given them to hold their Churches *in proprios uſus*, that is, *in manu veſtra* (as the words are) *retinere & earum Beneficia ad proprios uſus reſervare, conſtitutis ibidem Vicariis & Dioceſano Epiſcopo præſentatis, qui eis de ſpiritualibus, vobis vero de Temporalibus*

[a] *Hoſtienſ. ſumm. tit. de capellis Monach. Sect. quid juris?* & vide *tit. de Privileg. Sect. quid operatur.*

[b] *Specul. tit. de capellis Monach. Sect. 2.*

[c] Vide *Hoſtienſ. ſumm. eod. tit. Sect. quid ſit.*

[*] Ms. *Reperitur in Vol. quo compingitur* Fridegod. poeta *in Biblioth. Cottonian.*

poralibus omnibus, videlicet Decimis & Obventionibus debeant respondere, dummodo Vicariis & cæteris Ministris earundem Ecclesiarum in necessariis provideatis, &c. What can be plainer, than that the phrase of *respondere* in the Canons is here as it were purposely declared, as we have conceived it, according to Antiquity? And sometimes also Appropriations were made by Lay-men [1], reserving to themselves a *jus patronatus*, and *jus præsentandi*. But all the profits of received Tithes and Glebe were theirs, who so had the Appropriations, and were dispensed at their pleasure; and to the Curates, in both kinds, as they thought fit, were some Salaries given, which turned afterwards oft-time into Vicarages that belong to such Appropriations: whence also it came, that their Presentations have been since and are now taken to be only to those Vicarages, being made perpetual; whereas indeed, their Vicars were originally presented to the whole Rectory, but had the benefit no otherwise than is before declared. The words of conveyance in Appropriating commonly were, *Dedi & confirmavi Ecclesiam de N. cum decimis*, or *cum Decimatione*, *&c.* Whereby the Church-Glebe and Tithes passed equally, by way of interest, to the Monastery. So anciently, and at this day, many Covents, but especially the *Præmonstratenses*, have divers Churches continually in their own hands. And some of the Monks received into

[1] *Amedæus Comes Sabaudiæ in Chart. Monast. Cluniac. An. D. 1025. dat. exist in Biblioth. Cluniac. pag. 413.*

into Orders, diſcharged the Cure. And in ſuch Inſtruments (of the elder Times) as more commonly ordained that they ſhould keep the Church preſentative, the Church it ſelf paſſed alſo it ſeems as well in right of property, as of patronage; which ſometimes alſo (as is before noted) was excepted to the Grantor. Examples enough are extant, wherein all this is apparent. For that more general way of Appropriating Tithes (the Church ſtill remaining preſentable, which ſpecially is pertinent hither) you may ſee the Grants and Bulls made to the Abbey [a] of *Clugny*, to the Abbey of [t] S. *Germans* in *Auxerres*, and many other like recited in Pope *Innocent* the third his Decretals, as alſo the Charter of *Henry* Earl of [c] *Brabant* to his Abbey of *Affligbem*, near *Bruxels*; of *Thierry* Earl of *Holland* [d] to the Abbey of *Egmond*; which, being but a few of a multitude, enough ſhew the uſe of the time in conveying Tithes in Appropriations ſeverally, and as diſtinct from the Church; and more are of this nature, where we ſpeak of the Engliſh uſe. And although alſo, Confirmations and Bulls of Popes and Biſhops are ſometimes added to ſuch ancient Appropriations (as you ſee in an ancient [e] Charter, by *Lewis* the fourth of *France*, in the year DCCCCXXXIX. to the Abbey of *Clugny*, where the Appropriations of Churches and Tithes, *Sicut per privilegium Romanum, & per*

[a] *Biblioth. Cluniac. p.* 1430. 1454.

[t] *Innocent.* 3. *in Epiſt. tom.* 2. *p.* 435. *alibi ſæpe.* & vide *ſi placet, Chartam Abbati Vezeliac. apud Andream Quercetan. in Notis ad Biblioth. Cluniac. pag.* 133.

[c] Apud *Aubertum Miræum in Orig. Canob. cap.* 43. *ubi & B. Ida diploma conſulas.*

[d] *Apud I. Douzam. Annal. Holl. lib.* 10.

[e] *Biblioth. Cluniac. pag.* 265.

ſcripta Epiſcoporum adquiſerunt, are confirmed; and in other Monuments of ſucceeding Times) yet thoſe were gotten by the Monks, to ſatisfie the Canons; not to give validity in ſecular or common Law, then practiſed. But alſo ſome Inſtruments of Appropriations are, wherein, from Biſhops only, Tithes of other mens Lands were conveyed to Monaſteries; as in that eſpecially of *Athelbero*, Biſhop of *Hamborough*, in the year MCXLI. [1] whereby he gives to the New Minſter in *Wipenthorp*, then newly founded by *Vicelin* in the Territory of *Holſt*, *ejuſdem Villæ Decimam cum aliarum quarundam Villarum ſubter poſitarum Decimis, veluti in villa Stavera, Horgan, Brachtenuelde, Tuenthorp, Godeland, Wlmerſthorp, Boienbutle, Husberg, Cumerueld, Padenworth, Withorp, Padenſtede, Bulligſtede, ſed & alias Decimas juxta fluvium Geſtere in utroque littore à villa Elmeshorn uſque ad lacum Wickflet, &c.* with divers other. And by another Charter, dated MCXLVI. he gives to the ſame Monaſtery other Tithes of great value; and ſome of his ſucceſſors [4] follow his example. If you queſtion how the Biſhop came to have power to make theſe Grants, either in regard of Parochial Curates by the Canon-Law, or of the Lay-owners intereſt, according to the practice of the Times; know, that in this and moſt of the Biſhopricks of *Germany* eſpecially (which began with the Chriſtianity of the Dioceſſes,

[1] *In App. ad Hiſt. Brom. pag.* 114 & 119.

[4] *Baldwin. Arch. Hamburg. An. D.* 1174.

ceſſes, about, or ſince the beginning of the *French* Empire) the right of Tithes, through thoſe Dioceſſes, was challenged by the Biſhops onely (and that juſtly enough by the Laws of the Empire, which preſently are related) becauſe the Pariſhes being not limited, nor indeed Chriſtianity ſo at firſt ſetled, that they could have been well aſſigned to Parochial Curates, the Biſhops were the true and immediate Parochial and Miniſtring Rectors in their Biſhopricks; and although afterward, Pariſh-Churches were founded, yet to them they would not reſign their ancient right in Tithes, which from their firſt Function there, they had either enjoyed, or ſtill pretended to, both in regard of the value of them, as alſo becauſe every founded Church was to be otherwiſe endowed with Manſe and Glebe. Neither had it been altogether ſafe among ſo obſtinate a people (which could ſcarce by any means be brought to pay any Tenths) to have permitted every Pariſh-Rector afterward to have demanded them, or taught them due to himſelf, for to ſuch as had both at once received the Doctrine of the Faith, and the declaration of the right of Tiths due to the Miniſters (which were only, when they received it, the Biſhops, if you reſpect only, as you muſt, the Miniſters ſetled among them) it might have ſeemed a different Doctrine, to have afterward taught them due to any inferior part of the

Hierarchie; especially in the weaker years of that Church. Hence is it, that the Archbishop of [3] *Mentz*, claimed all the Tithes in *Turingia*, the Bishop of [4] *Lubeck*, of [5] *Saltzburg*, and others, the Tithes of their Dioceses, and hence only those of *Hamborough* so liberally disposse of them. Neither could any of these reasons so well have place in other Countries, for (except in *Germany*, and those more Northern parts) Christianity was in most places of *Europe*, it seems, so established, and the Hierarchie of Bishops and parochial Rectors so setled, before any common Doctrine or general Law, for payment of Tithes, was so divulged (for a thing of necessary observation) in the Church, that when it came after to be commanded, it could not be, in any conceit, better ordered, than according to the division of limited Parishes, and, those wanting at the time when the Faith, and the Doctrine and Laws of Tithes, came first into those parts, how could it on (the other side) fall out, but that they should be taught due only to the Bishopricks? Which opinion also, it is no wonder, that those Bishops should be willing to preserve and continue, after Parishes were there divided, and after Tithes came at length to be paid them. For long they preached, and much stir was about it, before they could get an usual payment of them. Neither need you mistrust, that their right to Tithes, so clearly pretended

[3] *Lambert. Schaffnaburg. pag.* 187.
[4] *Kranz. Wandal. lib.* 4. *c.* 38. & 39.
[5] Vide *Greg.* 7. *Regist. lib.* 2. *Epist.* 77.

pretended in the Appropriations by the Biſhops of *Hamborough*, was only from the Epiſcopal right which the Canoniſts allow, [a] in caſe where the Lands, wherein the Tithes encreaſe, are not aſſigned to any one Pariſh Church. The contrary thereof appears enough in other conveyances made to the ſame Monaſtery; in which the ſame Biſhop *Athelbero*, firſt in MCXLII. Appropriates to it the Pariſh-Church of *Biſhorſt* upon *Albis*, *cum banno ſimul & cum omnibus appendiciis ejus acquiſitis, vel acquirendis*, and with the largeſt bounty that the thing given might carry with it, but afterward, in MCXLVI. he grants to it alſo a good part of the Tithes within the Bann and precinct aſſigned to the ſame Church; which plainly ſhews, that he granted Tithes of Lands, already aſſigned to pariſhes. For his Pariſh-Churches and their profits were no other, than what Foundations, ſpecial Endowments, and the Offerings of the Pariſhioners, within their Bann or Limits, had made them. Which is well juſtified by an old Rimer, that in Verſe, which would grieve *Apollo*'s heart to hear, ſings *Athelbero*'s liberality to the Monaſtery, and expreſſes the Tithes of fourteen Villages, and other places given by him, and then comes two Churches (that he afterward appropriated to it) *Biſhorſt* and *Ichorſt*, and names them only as they had Banns or Limits and Pariſhioners; as

[a] *Extr. de Dec. c. 13. quoniam.*

Biſhorſt

Biſhorſt *cum Bannis*, *Bannos cum parochianis*
Ichorſt *cum Bannis*, *Bannos cum parochianis*.

And then adds,

Et Biſhorſtenſis *Decimatio tota paludis*
Additur & quæque fratrum labor occupat æque.

Where you ſee, he diligently remembers alſo an Exemption given to it by that Biſhop: which could hardly have been, if the general right of Tithes had not been ſuppoſed in him. But out of theſe things you may probably collect, that by this time (that is, divers years before the end of theſe CCCC. years) in ſome of thoſe Northern Churches, Tenths were paid more juſtly, according to the deſire of the Clergy, than in other places; where you ſhall find arbitrary conſecrations by Lay-men, continuing till about MCC. For if the Biſhop had not had theſe Tithes paid, but had pretended only right in them, his bounty to the Monaſtery had been to little purpoſe. So in the Dioceſs of *Oldenburg*, about MCLX. payment was duly, it ſeems, made to the Biſhop by all, ſaving thoſe which had improved the deſerts of *wagria*, which could by no means be brought to it. *Decimas ex more* [a] *ſolvere recuſaverunt*, ſayes *Krantzius*; being yet ready to give a competent part of their encreaſe. And although *Gerold* the Biſhop and Count *Adolph* joyned together; the one with perſwaſion (wherein he pretended

[a] *Wandal. lib. 4. cap. 38. & 39.*

tended to them *Exempla*, as the ſame Author writes, *Eccleſiarum omnium & præſertim proximarum*, and told them of *Divinum de Decimis præceptum*: the other with power, to make them tithe their profits; yet they utterly refuſed, and with tumult and clamours made open profeſſion, *Servili conditioni nunquam ſe colla ſubmiſſuros, per quam omne Chriſticolarum genus Pontificum preſſura laboret* Neither were the *Danes* in thoſe Ages eaſier to be brought to the payment of Tithes to the Church. Indeed they ſo much abhorred it, that no greater cauſe was, why they barbarouſly betrayed and murdered their King *Knout*[1] the fourth, than that he would have impoſed it. And about the year MCLXXX. under King *Waldemar* the firſt, *Abſalon* Biſhop of *Lunden* would have had them all paid their Tithes, and that under pain of an Interdict to continue againſt them: but they ſtourly refuſed, and anſwered by publick meſſage to the Clergy, That notwithſtanding the Interdict, they ſhould carefully miniſter Divine Service and Sacraments, or elſe depart the Countrey: if they did neither, *Non ſolum rerum amiſſionem ſed membrorum etiam truncationem demorarentur.* And it is well noted by *Krantzius*, that the Northern Nations generally, were very hardly brought to pay. But after continual and earneſt Doctrine of the Church, and command of Princes, at length many of them yielded; that is, as

[1] *An. D.* 1078. *Krantz. Dania.* [4] *cap.* 37. & *in præf. ad. Hiſt. Regni Norweg. & Dan. lib.* 6. *cap.* 50.

may be conjectured, in the first half of the year MCC. Through the frequent use of those *arbitrary Consecrations*, and those *Appropriations*, Churches with their Tithes, and Tithes of several possessions, were in exceeding number established in Monasteries, as well of the Nuns as Monks. The Tithes of LX. of LXXX. or more Parishes, were, by those courses, annext sometime to one Monastery; which the Head and Covent possessed, not as any part, or as pretending themselves to be any part of that Clergy which made up the Evangelical Priesthood, or deserved them by ministring Divine Service and Sacraments to the owners. For indeed, divers of these appropriated Tithes were out of such lands as lay so distant from the Monasteries, not in other Dioceses only, but also in other Kingdoms, that the owners never saw or knew the Monks, or their Cloister, nor otherwise heard of them, but by their Cellarars or Provosts that exacted payment. Whereupon it was in time of our *Edward* the third affirmed in a petition in Parliament, That Aliens (which by reason of appropriations made to their Houses beyond the Seas, or to their Priories or Cells in this Kingdom, or the like) did so devour the Salaries due to Parish Curates, and so neglect the Divine Service which they should have taken care for in every Parish, that they did more hurt to holy Church, than all the *Jews* and *Sa-*

Rot. Parl. 50. Ed 3. art. 94.

racens

racens of the World. Which might have been well applicable to some kind of Non-residence of Denizens also. But the religious persons justified their consuming this Ecclesiastick revenue by reason only of their Prayers, their Tears, their Psalms, their Almes, and the like exercises of Devotion; beside their maintenance of Curats with arbitrary Salaries, in the Parish-Churches appropriated to them. Which is at large seen in an Epistle of *Peter* Abbot of *Clugny* to S. *Bernard* Abbot of the *Cistercian* Order at *Clarevaulx*, about the Monks of *Clugny* their possessing of a large number of Parochial Tithes. The *Cistercians* had made divers complaints against them, and one was upon this very point, in these words: *Ecclesiarum* [a] *Parochialium, primitiarum & Decimarum possessiones, quæ ratio vobis contulit? Cum hæc omnia non ad Monachos, sed ad Clericos, Canonica Sanctione, pertineant; illis quippe quorum officii est baptizare & prædicare & reliqua quæ ad animarum pertinent salutem gerere, hæc concessa sunt, ut non sit eis necesse implicari sæcularibus negotiis; sed quia in Ecclesia laborant in Ecclesia vivant.* Hereto, among divers other imputations, the Abbot of *Clugny* answers, and gives his reason for their enjoying of Tithes, thus: *Quia Monachi ex maxima parte fidelium saluti invigilant, licet Sacramenta minime ministrant, æstimamus ipsorum primitias, Decimas & Oblationes, & quæque beneficia*

[a] *Petr. Cluniac. lib. 1. epist. 28. circ. An. D. 1150.* Vide, si placet, *Joann. Sarisbur. de Nugis Curialium, lib. 7. cap. 21.*

eos digne posse suscipere, quoniam & reliqua populo Christiano à Presbyteris (that is, by the Curates, which they maintained) *faciunt exhiberi.* And another of great note before this Abbots time, pretends special charity towards the poor, for sufficient reason why Monasteries and Hermitages had Tithes given them: *Ut copiosiora* (saith he) *alimenta proficiant, dantur in Monasteriis & Eremis Decima quorunque proventuum, & non modo pecorum sed & ornicum pariter & ovorum.* The same reasons hold in justifying of Appropriations to Nunneries, where the persons are not capable of the Ministry. And among Examples of the Age, take this one for some confirmation, in these elder times, of the right which Monks pretended to them. In the year MLIX. a great [6] controversie fell between *Meginher* Abbot of *Herfeildi*, and *Burchard* Bishop of *Halberstadt*, about Tithes of large Territories in *Saxonie*, appropriated to the Abbey. The Abbot stood upon the Appropriation; the Bishop upon his Episcopal right, which by the Canon Law is, and anciently was the same with parochial, in places not limited to any certain Parishes. The Bishops greatness with the Judges of both Laws, made the Abbot so despair of success in the Suit, that he prosecuted no further; but withal summoned the Bishop to appear before the Almighty in his Judgment-seat, within some few dayes there

[4] *Petr. Damian. lib. 2. Epist. 14.*

[5] ὀρνίχων, *i. avium seu Gallinarum.*

[6] *Lambert. Schaffnaburg. in Annal. pag. 466. edit. Argentorat.* Videsis etiam *Franciſci Monaldi* consilium *de jure Abbatiæ S. Mariæ è Carceribus in Diœcesi Patauina, apud Joh. Baptist Cæsar. part. 1. consil. 46.*

there to anſwer in the ſame Action; and very ſoon after departed this life. Not many days interceded, but the Biſhop riding towards the Court where this Suit had depended, to diſpatch ſome proceedings touching it, ſuddainly fell from his Horſe very ſick; and being carried into his Inn, gave moſt ſtrict charge (as one divinely moved) that the Abbey ſhould have reſtitution and quiet poſſeſſion of thoſe Tithes for ever; and admoniſht them all that were by, That whoever had been parties with him in that oppreſſion againſt the Abbey, ſhould by the like Judgment from Heaven ſuffer as he did; confeſſing to the two Biſhops of *Magdeburg* and *Hildeneſheim* (then viſiting him) that he was now called, according to the Abbots ſummons to anſwer his exaction of the appropriated Tithes, before the Judgement-Seat of the Almighty: and ſoon after, he moſt miſerably died, *Uto* his Arch-prieſt, who had been his great Inſtrument in the Suit, the ſame year ſuddainly following him. But how-ever either the uſual practiſe, or this example wrought, a year or two after, this queſtioning of Tithes upon Epiſcopal right (that is. upon pretence that all Tithes of every Dioceſs were due to the Biſhop, as to the Rector of a great Pariſh; for ſuch a right was moſt ſpecially pretended by Biſhops in *Germanie*, as is already declared, and that both againſt Appropriations & arbitrary Conſecrations)

ſecrations) bred moſt perillous diſturbances of State, and of no ſmall conſequent in thoſe parts. For in the year MLXII. when *Otho* ſucceeded his Brother *William* in the Marquiſat of *Turingia*, *Sigifrid* Archbiſhop of *Mentz* denied him the relieving of his Fiefs held of the Archbiſhoprick, unleſs he would give him all the Tenths of his Demeſnes, and compel all the Tenants of his Marquiſat to do the like. This was exceedingly diſtaſted by the *Turingians*, inſomuch, that they openly proteſt, they would ſooner loſe their lives, *quam patrum ſuorum legitimo amittere*, that is, than part with their anceſtrial right of detaining, or diſpoſition of Tithes, according to their uſe, either of Infeodations or Appropriations. So you muſt of neceſſity underſtand it; and other paſſages in the Author (*Lambert* of *Schaffnaburg*, then living, who relates it) make that ſenſe of it plain. Neither was this *Otho*, for as much as in him lay, wanting to the Archbiſhops requeſt. But in the year MLXVII. upon his death, he left joy enough to his countrey-men, in regard of that his yielding about the Tenths, which none of his anceſtors had given example of. But in him it was the chief Seminary, as the Monk ſayes, of the many calamities ſuffered in the *Saxon* War of that time. Great diſputation of Canoniſts followed ſome ſix yeares after, in a Councel held, about this Epiſcopal right, in

Er-

Erpesfurt, where not only the Tithes of Laymen were called in question, but Tithes appropriated to the Abbeys of *Fulda* and *Herfelde*, and of all their possessions, were challenged by the Archbishop, his Canonists vehemently disputing for him; and the Emperor *Henry* the fourth, who much invaded the rights of the Church, urging him forward, that indeed he might have had a moitie with him. At length, the Abbots divided with the Bishop by a special transaction, and, when they yielded, the Laymen, serving the time, agreed to give him theirs also. But presently the action of them ceased. *Hoc anno* (MLXXIII.) *post exortum bellum Saxonicum* (saies the Monk) *nulla deinceps exactio facta est Decimarum in Turingia, gaudentibus Turingis quod occasionem invenissent, et traditas sibi à patribus leges manu militari tuerentur.* And although the Archbishop again questioned it, no success followed. Of Appropriations of Tithes, hitherto.

[a] Vide Schaffnaburg. pag. 487.

IV. The use of Infeodations, or Conveyances of the perpetual right of Tithes into Lay-hands, is remembered by *Peter Damian*, that complained of it to Pope *Alexander* the second, about the year MLX. *Insuper etiam & Decimæ* (saith he) *ac plebes addantur in Beneficium sæcularibus.* Where *plebes* is taken for Parish Churches, as it is often used in the old Canons: and they are the same, to this purpose, with parochial

[a] Petr. Damian. lib. 1. Epist. 10. & lib. 4. Epist. 12.

Tithes

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Tithes and Temporalities; although literally, they interpret only λαοὶ that is, the *Lay-people of the Parish*, or *those of whom the Cure is*; which word is often for *plebes* in the Greek Canons of the *African* Church. The Original of the practice of these Infeodations of Tithes appears not in old monuments. Those which refer them to the time *Charles Martel*, or [9] any age near him, are in gross error; neither is any mention of them, for the space of about CCC. years after him. Lands and Monasteries consecrated, were [1] about those times of *Martel* often possest by the Laity; and often wrongfully, as the story of him, *Carloman*, and their successors, plentifully discover, and thereof enough in the former Chapter. But no Tithes in those times were infeodated, as also is judiciously observed and taught by the learned *Stephen* [2] *Pasquier*, Advocat-General *en la chambre des Comptes*, whose diligence yet fails, when he confidently delivers, that these Infeodations began about the time of the holy Wars that were between MXC. and MC. The contrary appears plainly, not only in that of *Peter Damian*, who lived long before, but also in the Council of *Lateran*, held in MLXXVIII. where this Canon is, *Decimas quas in usum pietatis concessas esse Canonica authoritas demonstrat, à Laicis possideri Apostolica authoritate prohibemus: sive enim ab Episcopis vel Regibus, vel quibuslibet*

[9] Vide *Krantz. Metropol. lib. 4. c. 2.* Ubi ad morem Mandrabuli, conjecturas de hac re infœliciter adfert.

[1] Vide, cum his quæ supra adnotavimus. *Flodoard. hist. Rhemens. Eccles lib. 2. cap. 12.* etiam in Ecclesia Orientali Monasteriis sacris Laici sæpe usi fruiti sunt. constat *in* ὑπομνήματ. σαυόδ. *Alexii Patriarchæ Constantinop.* edit. *in comment. Zonaræ, & in Canon. 13. Synod. Oecumenica 7.*

[2] En *les recerches de la France, liu. 3. chap. 35.*

quibuſlibet perſonis eas acceperint, niſi Eccleſiæ reddiderint, ſciant ſe ſacrilegii crimen incurrere: Which in the ſame ſyllables is iterated in the general Council of *Lateran*, held in M.C. XXXIX. under *Innocent* the ſecond. But in the firſt you ſee clearly, that Infeodations of Tithes were ancienter than the Holy Wars: Which is plainly confirmed alſo by the Council of *Cleremont*, held in MXCV. by *Urban* the ſecond; where it was forbidden, That Lay men ſhould thenceforth *Altaria vel Eccleſias ſibi retinere*, that is, keep Churches and conſecrated Tithes in their own hands: for ſo was the common [4] ſignification of *Altaria* at that time in *France*. And obſerve there-withal, that they had been practiſed not alone by Lay men, but by Biſhops alſo; as is declared in *Peter Damians* [5] complaint againſt them for it. Likewiſe it ſeems, Religious Orders made Fiefs or Tenements of Tithes [6] for Lay men. Teſtimony of theſe Infeodations are very frequent in the Canon Law, which commonly ſtiles the Tithes ſo conveyed into Lay hands, *Decimæ Laicis in feudum conceſſæ*, and *Feudales*, and, *Infeudatæ*, that is, Feudal Tithes, or as the *French* Lawyers call them, *Dixmes infeodees*. And to this day theſe Infeudations remain; eſpecially in *France* and *Spain*, and alſo elſewhere. Neither are the Tithes ſo poſſeſt, other than meer Lay poſſeſſions, and determinable before the ſecular Judge.

[4] *C. 1. q. 3. c. 4. quæſitum.*

[5] *Lib. 4. Epiſt. 12.*

[6] *6. Decretal. tit. de Dec. c. 2. Sext. ſane.*

But thereof, more in the practice of the next CCCC. years, in which the ancient Infeodations have continued. But since the year M. C. LXXX. none could, in *France* especially, be newly created; that is, no Lay man might thenceforth begin Infeodations of Tithes parochially due by the Canons. So was it ordained in the general Council of *Lateran* then held, in these words: *Prohibemus* [g] *ne Laici Decimas cum animarum suarum periculo detinentes in alios Laicos possint aliquo modo transferre. Si quis vero receperit & Ecclesiæ non reddiderit, Christiana sepultura privetur.* So hath the continual practice (which in such a case is the best interpreter) since been in that Country, which hath received this Canon for a binding Law. Neither is it [h] otherwise to be understood; however divers of the later Canonists, with ignorance enough, draw it to a different sense, and oppose it against the right of all feudal Tithes, being ancienter than the Council, and since passed over into Lay hands. And whereas they commonly suppose, that all these ancient feudal Tithes were at first spiritual, and transferred from Church-men (at the request of Princes) into Lay hands, and since wrongfully detained; surely it is an errour, neither is there any ancient warrant sufficient for it: many of them were doubtless created by Laymens Grants, as Rents-charge, Estovers, Turbaries, and the like are. Who can doubt of it, that

[g] *Extr. tit. de Dec. c. 19. prohibemus.*

[h] Neque aliter sanè intelligunt vetustiores illi juris interpretes *Innocent. 4. Hostiensis, Bernardus,* & vide *Henricum Bowbic ad tit. de Dec. 9. quamvis.*

that obſerves but alone this Canon *Prohibemus*? Whence alſo may be ſtrongly infer'd, that the greater number of Infeudations were through Grants made by lay men to lay men, as Conſecrations were, at their pleaſure, made to Churches; for what is there only forbidden by the Council, may be thought the greateſt and moſt prejudicial practice of the time againſt the profit of the Clergie. Neither is any proviſion there made againſt the other kind of Infeudations, which paſs Tithes from Church-men. And although the words *& Eccleſiæ non reddiderit*, in the Canon (and in the Body of the ſame Council, in *Roger* of *Houeden*) ſeem to ſuppoſe, as if it had been made for ſuch Tithes as had been taken from the Church; yet indeed the truer reading is *tradiderit*, as appears in the body of that Council firſt fully publiſht out of the *Vatican*, in the laſt Tome of the General Councils, printed at *Rome* by command of the preſent Pope *Paul* the fifth; wherewith agrees other Editions, but of leſs Authority. And perhaps alſo ſome old Infeudations were made by lay Patrons in the vacancie of their Churches, by the ſame challenged right as they alone made Appropriations. For, as by our common Law, the Patron and the Biſhop may in the time of vacancie diſpoſe of the Endowments (as by the Canon law alſo, if the Chapters conſent, or the Popes, be had; ſo in thoſe elder times, upon

equal reaſon, when the Patron had the only diſpoſition and intereſt of the Church (as is already ſhew'd) he alone ſometimes granted any part, at his choice, it ſeems, to Lay or Clergy men. Why not any part as well as all? And that Patrons granted whole Churches into Lay hands, appears by divers paſſages in *Flodoards* Rhemiſh hiſtory, by that before cited out of *Damian*, and by the general Council of *Lateran*, under *Innocent* the ſecond; where it is ordained, that they ſhould be reſtored from the Lay men to the diſpoſition of the Biſhops. And an example is extant among the Records of the[i] Monaſtery of *Egmond* in *Holland*; wherein *Charles* King of *France* (who is commonly therein taken for *Charles* the *Bald*; but *Douza* thinks it to be rather *Charles* the *Simple*, and made about D. CCCC. and is thereto perſwaded by Synchroniſme, the beſt tryal of ſuch truths) recites, that *Hagano*, one of his Nobles, humbly requeſted of him for *Thierry* (the firſt Earl of *Holland*) *quaſdam res*; *Eccleſiam videlicet* Hecmunde, *cum omnibus ad eam jure pertinentibus & loco qui dicitur* Zwtherdes Haghe *uſque ad* Fortrapa *&* Kinnem, *&c.* Which by patent he grants him in fee, *& ut libere hæc omnia teneat atque poſſideat, habeat que de his poteſtatem juxta libitum ſuum ordinandi ſeu faciendi.* If the Church it ſelf of *Egmund* (the Pariſh Church; for it was then no Abbey, but afterward made one

[i] Apud *Jac. Douzam. in Annal. Holland. lib. 5.*

one by that *Thierry*) paſſed not by this patent into Lay hands, I ſufficiently underſtand it not: neither is it ſpoken of, but as what might, according to the uſe of that time, be clearly made a Lay fee. Through theſe kind of Grants, practiſed both by Lay and Clergy men, Princes, and private perſons, the ancient Infeodations of Tithes had their original, as well as by Leaſes from the Church; and not by impoſition of Tenths by Princes, as ſome [k] have ignorantly conjectured; although alſo it be certain, that Princes ſometimes joyned [l] with the Biſhops to bring in the payment of Tithes, that thereby themſelves might have beneficial Infeodations of them from the Church. But as Princes made Infeodations out of their own Demeſnes, or their own Churches; ſo other private Lay Perſons. And the Clergy, ſometimes of Tithes already veſted in them; and ſometimes, it ſeems, out of their Demeſnes. And perhaps eſpecially religious perſons, exempted from payment by Bulls, made ſome out of their own Demeſnes, as may be conjectured out of a Decree [m] of Pope *Alexander* the fourth, that ſpeaks particularly of Infeodations made *à religioſis exemptis & aliis.* And for example of Tithes already poſſeſſed, and thus granted by the Church, you may ſpecially ſee that of *Engelbert* Count of *Goritz*, who had an Infeodation [n] anciently from the Church of *Trieſte*, in the Patriarchate of *Aquilegia*:

k Videſis. *Krantz. Metropol. lib.* 1. *c.* 2.

l *Schaffnaburg. An. D.* 1073. & *Krant. lib.* 4. *Wandalia cap.* 37.

m 6. *lib. tit. de Dec. c.* 2. *Sect. fin.*

n *Innocent.* 3. *Epiſt. lib.* 2. *p.* 447. & vide *ib. p.* 482. Edit. Colonienſi.

legia: and *Henrie* Count of *Ratzenbourg* [o] had an Infeodation of all the Tithes which were paid to the Church in his Territorie, from the Biſhop of *Oldenbourg*: ſo one *Hildeward* had one in the [p] Dioceſs of *Hamborough*, and ſurrendered it to *Baldwin* Archbiſhop there, about M. C. LXXIV. But examples of them were [q] very many, the diſlike whereof was one ſpecial cauſe, pretended by thoſe of the Deſarts of *Wagria* in *Holſt*, about M. C. LXX. why they would pay no Tithes. *Præterea* (ſays [r] *Krantzius*) *& hoc adiecerunt, non multum a veritate aberrantes, quod omnes pæne Decimæ in luxus ceſſerint hominum ſæcularium.* To theſe teſtimonies, of Lay mens arbitrary detaining, diſpoſing, or receiving of Tithes in thoſe elder ages, you may add [f] *Bernardus Morlanenſis* (an Engliſh Monk of *Clugny*, about King *Stephen*) his complaint of non-payment to the Clergie: thus ſpeaks he in his affected form of Verſes.

[o] *Kranz Wandalia, lib. 4. cap. 38. & 39.*

[p] *Append. ad hiſt. Bremenſ. p. 134.*

[q] Vide extr. de Dec. c. 17.

[r] *Wandalia lib. 4. cap. 38.*

[f] *Ms. lib. 2. de contemptu mundi in* Biblioth. Cotton.

Ruſticus hordea, mittit in horrea, farra recondit.
Horrea grandia, vaſa capacia multaque condit.
Nec pecus aut ſata dante Deo data vult Decimare.
Nec ſacra portio, nec Decimatio redditur aræ.

V. The like liberty as Lay-men had enjoyed (in not ſubjecting themſelves to the payment of Tithes, according to the Laws of the Church, but beſtowing or retaining them at their own wills

wills in moſt places, even from the beginning of Chriſtianity, until about the year M. CC.) was another way purchaſed, for ſome time, by religious houſes, ſo to diſcharge themſelves of cenſure of the Canons, and that by *Exemptions* or *Papal priviledge*. For however the Laity juſtified themſelves by their ſecular right, admitting of Canons, that toucht their eſtates, but as they ſaw cauſe in their own judgments; yet Religious perſons who were alwayes of the Pontificial ſide, and reckoned in the Catalogue of the Clergy, and poſſeſſed divers large Territories, durſt not ſo opppoſe what was ordained either by Decree at *Rome*, or in Synods General or Provincial. Therefore, when from the beginning of this Age, both Doctrine and Canons (of which more preſently) had made the duty of Tithes of a known right among the Clergy; Clergy men became ſomwhat ſtrict obſervers of the payment, as you ſee plainly in that before cited out of *Godfrey* Abbot of *Vendoſme*, with whom *Peter* Abbot of *Clugny* agrees. And, although [a]Canons be in *Burchard*, *Iuo*, and *Gratian*, refered to, I know not what ancient Council of *Chalons* or *Mentz*, whereby Lands, occupied by Biſhops or Abbots, ſeem to be diſcharged; according to which alſo, another Decree is found in the *Vatican*, annext to ſome Councils of Pope *Urban* the ſecond, yet it ſeems by the authority of thoſe Abbots and other teſtimony, that

[a] *Vide ſi c. 16. q. 1. c. 46 & notas editionis Gregoriana adjectas.*

that they were not practised as Church Laws. But what some of the Clergy durst not do for the Canons, they had licence for by Exemptions from the Pope. And, beside those other Canons; from [2] *Paschal* the second, about M. C. there was granted to all religious persons, a special discharge from Tithes. But it seems also that this Exemption soon took not force in execution; for it was made divers years before those two Abbots wrote, and (if I understand them) expresly affirmed the common practice of the contrary. And in an instrument of composition twixt the *Templars* [3] and *Præmonstratenses* in the year M. C. XLII. one special article was, that, *Nullus in utroque ordine, alter ab altero, tam de nutrimentis, quam de laboribus Decimas exiget vel accipiet.* Whence some inference might be that no clear exemption proceeded (at least in force and practice) for both. But however, afterward about M. C. L. most of all the religious Orders were [4] exempted, by Pontificial priviledge, from payment out of possessions kept in their own occupation, which Pope *Hadrian* the fourth (about that time) restrained to the *Cistercians*, *Templars*, and *Hospitalars*, and decreed that all other religious Orders should pay Tithes of whatsoever encrease they had in their own occupation, saving of [5] new Improvements by culture, of pasture for their Cattel and of Garden fruits. But neither were they

[2] *Extr. tit. de dec. c. novum genus, & App. Concil. Lateran. part. 13. cap. 16.*

[3] *Chronic. Ord. Præmonstrat.*

[4] *Extr. de dec. c. 10. ex parte* vide *Joann. Sarisburiens. de Nug. Curialium lib. 7. c. 21 & Append. ad Concil. Lateran. part. 13. c. 3. & 10. & part. 41. cap. 4.*

[5] Videsis *Alex. 2. in 6. de dec. c. n statuto. & Innocent. 3. tom. .p. 410. Edit. oloniensi.*

they by theſe exemptions, freed from payment of Tithes, which were taught due only by common right to the Church. They were diſcharged alſo from ſuch as had formerly been [f] conſecrated out of their poſſeſſions, by their Founders or Benefactors, to other Churches, over which alſo the Pope challenged ſupreme authority in diſpoſition of their Revenues. But the Laytie would not permit ſuch exemptions to extend to their Infeodations. *Milites Galliarum*, ſayes *Peeter of Blois*, ſpeaking of the *Ciſtercians*, *ſibi jus Decimationis vſurpant, nec veſtris privilegiis deferentes, eas à vobis potenter extorquent.* But, that of thoſe three Orders, was afterward in the year M. CC. XV. in the generall Council of *Lateran*, limited to ſuch Lands as they [g] had before that Council purchaſed. Where obſerve by the way, that Exemptions were then cheifly allowed to two Orders, which are not properly to be reckon'd amongſt any part of the Clergie, or Eccleſiaſtick perſons. For the *Templars* and *Hoſpitalars* were devout Souldiers only, neither could [h] they juſtifie their enioying of tithes, either through exemption from the Pope or conſecrations from the Laytie, by the reaſons which other Cloiſter Monks vſed. Their prayers, or devotions in private, were not the ſervices expected from them in the Church; but their ſwords and valour only gave the deſert, as at this day may be truly affirmed of the *Hoſpitalars*

f *Petr. Bleſenſ. Epiſt.* 82. *apud Bochell. in Decret. Eccleſ. Gallican. lib.* 6. *cap.* 19.

g *Extr. de dec. c.* 34. *Nuper Abbates.*

h Videſis *Joann. Sariſbur. de Nugis Curialium, lib.* 7. *cap.* 21.

or Knights of St. *John's* of *Hieruſalem*, which being now, as in thoſe ancient times they were, only Souldiers of the Church, have therefore been divers times lately [i] adjudged in the Court of *Aides* in *Paris* to be no part of the Clergie. But alſo, by the ſucceding Popes, other like privileges were granted to [k] Biſhops, Abbots, and at their pleaſure. But of the Practice of theſe CCCC. years, thus much.

i *Le Brt. Advocat en la diſte cour. Playdoit 27.*

k Vide *Innocent. 3. tom. 2. pag. 139. & 410. & App. ad Concil. Later. general. part. 13 cap. 2. & ſeq.*

VI. Of the *Opinions* left in the moniments of the Clergy, both touching the Right of Tithes, and thoſe Practices, next breifly. Very frequent are the Teſtimonies in the old Councils of about the beginning of theſe CCCC. Years, in which Tithes are ſpoken of as due generally by God's Ordinance. As, *Decimas Deo dari omnino non negligatur, quas Deus ſibi dari conſtituit, quia timendum eſt, ut quiſquis Deo debitum ſuum abſtrahit, ne fortè Deus per peccatum ſuum auferat ei neceſſaria ſua*, which occurrs in the Provincial Council of *Mentz* held in D CCC. XIII. and is iterated in ſome [l] other ſucceding of the ſame Province, & in the [m] Capitularies. And it is ordinarily grounded upon the Levitical Laws (which are obviouſly cited for the right of Tithes in the very [n] ſyllables of *Moſes*) but ſometimes alſo on *Abraham's* & *Iacob's* examples, as in *Walafrid Strabo*, that liv'd about DCCC. XL. whoſe words are, *Decimas Deo & Sacerdotibus Dei dandas Abraham factis, Iacob promiſ-*

l Utrin *Concil. Mogunt. a. d. 846. & a d. 887.*

m *Benedict. Levit. lib. 5. cap. 9.*

n Vide *Concil. Aquiſgran. lib. 1. cap. 11. & ſeqq Tom. 3. Tom 3. edit. pen-ult. Bin. pag. 586.*

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ſis inſinuat, deinde lex ſtatuit & omnes Doctores ſancti commemorant; the ſelf ſame being [n] refer'd alſo to one of the Councils of *Mentz* of thoſe times. And *res* [o] *Dominicæ* and *Dominicæ* [p] *ſubſtantia* and *Dei* [q] *cenſus*, and the like are the attributes given to Tithes, by the Ancients of this age, which alſo they ſtile [r] *patrimonia pauperum*, and *Tributa egentium animarum*, and *Stipendia pauperum, hoſpitum, peregrinorum*; whence alſo the Clergy was not to uſe them *quaſi ſuis ſed quaſi commendatis*, as the words are of the Council of *Nantes*, held about the former part of theſe CCCC. Years. And Pope *Alexander* the third in an Epiſtle [s] to the Archbiſhop of *Rheimes*, ſayes, *non ab hominibus ſed ab ipſo Deo ſunt inſtitutæ*. And in another to the Biſhop of *Amiens*, he calls them *Sanctuarium*. And *Cæleſtin* [t] the third; *Fidelis homo de omnibus quæ licitè poteſt acquirere, Decimas erogare tenetur*. After him, *Innocent* the third; *Decimas Deus in ſignum univerſalis Dominii ſibi reddi præcepit ſuas eſſe Decimas & primitias aſſeverans*. And his general Council of [u] *Lateran* agrees with him. And it appears that *S. Ulrique* Biſhop of *Auſpurg* about the Year D.CCCC. L. in his Viſitations had eſpecially this Article of inquirie; [x] *Si Decimas rectè darent*; which ſhews his opinion that they were generally due. With theſe take the Autoritie of the Pœnitentials exerciſed by the Clergy in that age, by which, ſtrict examination was to

n C. 16 q. 7. c. 6.

o Levit. lib 7. cap. 152.

p Concil. Ticin. quod *Regiaticum* dicitur, ſub I. on. 4.

q Agrippin. apud Burchard. lib. 3. cap. 135.

r Aquiſgran. ſub Steph. 5. c. 116. extr. de dec. c. 26. Nannetenſ. ſyn c. 10.

s Extr. de dec. c. 14. & 15.

t Eod. c. 23.

tx tranſmiſſa &c. 26 tua nobis.

u Cap. 54. & extr. de dec. c. 33. tum non ſit.

x Berno Abbat in vita S. Udulrici cap. 10.

be made at Shrifts, whether the penitent had paid all kind of Tithes, in theſe words. *Haſt thou at any time neglected to pay thy Tenths to God, which God himſelf hath ordained to be given him? Or if thou haſt done ſo, or conſented to the defrauding of the Church therein, firſt reſtore to God four-fold: and then muſt thou ſuffer penance with bread and water only, for twentie dayes.* So it is delivered in [y] *Burchard* Biſhop of *Wormes*, that collected the Canons about the year M. Neither was any difference in the nature of the encreaſe by the common opinion of this time. The tenth of [z] all, aſwell of all kind of Perſonal as Predial, was taught due. Neither find I any man in in this age that by Doctrine expreſly oppoſed any of this, ſaving only that *French Leutardus*, who about the year M. held the payment of them neceſſarie. *Decimas* [a] *dare, dicebat, omnimodis eſſe ſuperfluum & inane.* But alſo other opinions he had, that being againſt the uſual Doctrine of the Church, gave him the name of Heretick, which he kept till his miſerable death. This may ſuffice for the expreſs teſtimonies of Opinion of this CCCC years touching the generall right of Tithes. But although this opinion be ſo frequently delivered it ſuch terms as may denote the Tenth due by *God's Law*, (that is, as it ſhould at firſt ſight ſeem, by the *Divine Moral Lay*, or the *Divine Natural Law*, which ſhould bind all men and ever,

y *Lib. 19. de Pœnitentia. & In Pœnitential. Roman. tit. 8. cap. 17.* idem habetur.

z *Cæleſtin. 3. extr. de dec. c. 22. non eſt. & 23. ex tranſmiſſa.*

a *Rodulphus Glaber hiſt. 2. c. 11.*

ever, and are to this purpoſe both one) yea it is plain, by ſo much of the practice of the Laytie as the Clergie commonly allow'd of, and by the general opinion of the Time, that the perſons held capable of them, were not only the labouring Preiſthood or Miniſtring Clergie. The diſpoſition of them in perpetual right to Monks, Nunns, the poor in Hoſpitalls, to religious orders of Knights, and that out of one Province or Kingdom whatſoever into any other, in this time was allowd cleerly in practice; and according to that practice they were inioyed. And the Clergie alſo generally agreed, that, by there Canonical form of conveyance, Tithes might be given (although ſome ancient [b] Canons were for Parochial right) to any Church, to Monaſteries, Hoſpitals, reliefe of Poor or Sick: that is, as [c] *Ivo* Biſhop of *Chartres* (being a great Canoniſt about M. C. XXX.) in his juſtifiing the right of Tithes, expreſſes it; *Decimas & fidelium oblationes Eccleſia* (ſo you muſt read, and ſo is his [d] Ms. copie) *lex caritatis communicare poteſt non tantùm Monaſteriis ſed etiam Xenodochiis, infirmis & peregrinis.* For, ſaith he, *licet Decima & oblationes principaliter clericali debeantur militiæ, poteſt tamen Eccleſia omne quod habet cum omnibus pauperibus habere commune.* But this might not be done, as they would have it, by the Lay owner only. For he well adds, that nevertheleſſe no Monaſterie might, by the [e] Ca-

[b] *Leo 4 in c. 16. q. 1. c. 54. &c.*

[c] *Epiſt. 207. aſtipulatur, c. 16. q. 1. c. 68.* qui canon falſò ad D. Hieronymum refertur & *Concil. Clarimont. An. Do. 1095. c. 1. q. 3. c. 4. &c. 16. q. 7. c. 2.*

[d] *In Bibliothec. Cottoniana*; ubi Codex editus habet *Eccleſiaſtica.*

[e] *Urban. 2. c. 16. q. 7. c. 39.*

nons, lawfully receive a conveyance of Tithes, *ab illis ad quos non pertinet, id eſt, à Laicis*; yet you ſee cleerly that Monaſteries and other Churches did receive them from Lay men, and continually enjoy'd them. So that the cheifeſt difference twixt the Laitie and Clergy herein came to be, who ſhould diſpoſe or convey the Tenths (according as they varied alſo about Inveſtitures) not what perſons (ſaving in the uſe of Infeodations) might have a perpetuall right in them. And in that difference the Clergy yielded ſo frequently in receiving, allowing and confirming arbitrarie conveyances (as is before ſhew'd) of Tithes, no otherwiſe then as of Houſes or Glebe, to Monks, Nunns, or Churches farr diſtant; that if they held them due to the labouring and Parochial Miniſter (were he Biſhop or other) by the *Divine Moral Law*, they did in this no leſſe than commit againſt their own conſciences, and exerciſe a kind of continual and fearfull ſacrilege. And indeed it appears that it was expreſly held againſt the *Divine Law*, to convey Tithes to any other Church than where the owner uſed moſt commonly to receive his Soul's food. For the Clergy in a petition to the Emperor *Lewes* the ſecond, in the Council of *Pavia* in DCCC. LV. confidently affirmed, that it was generally taken, that ſuch a conveyance to another Church *pro libitu*, was aſwell *divinæ Legi*, as *ſacris Canonibus contrarium*. But

c. 16. §. 1. c. 56. [f]

But then cleerly alſo, the chiefeſt practice of theſe CCCC. Years was herein contrary to the *Divine Law*; a ſtrange imputation to lay on the time, if at leaſt *Divine Law* there, & *Deus præcepit* and *Deus conſtituit*, & the like in their other paſſages for Tithes, denoted the *Divine Moral Law*. But if you ſo underſtand it, how could that *Lex Charitatis*, that *Ivo* ſpeaks of, ſo diſpenſe with it? And with what colour could the Church ſo frequently practice againſt it, or pretend arbitrarie Conſecrations to be ſo meritorius? But for an Interpretation of their meaning, by ſhewing how others conceive that *Lex divina* here, look in the next CCCC. Years. As for *Exemptions*; ſome complaints were made againſt them by ſuch as loſt by them; as you may [g] ſee by the Monks of *Clugni*, complaining againſt the *Ciſtercians*, and by *Peeter* of *Blois*. But out of them alſo may be collected, that the general Opinion of the age was not, that they were due by the *Divine Moral Law*. Was *Rome*, in thoſe ancient times ſo bold to grant ſo many Diſpenſations expreſsly againſt the *Divine Moral Law*? Yet alſo *John* [h] Biſhop of *Chartres*, in thoſe times, found much fault with the Exemptions given to religious perſons. *Miror* (ſaith he) *ut fidelium pace loquar, quodnam ſit quod Decimas & jura aliena uſurpare non erubeſcunt. Inquient fortè, Religioſi ſumus. Planè Decimas ſolvere Religionis pars eſt.* And more to this purpoſe you may

[g] *Pet Cluniac. lib. 1. epiſt 32 ad Innocent. 2. & Petrus Bleſ. epiſt 82. apud Bochell Eccleſ. Gall. Decret. lib. 6. cap. 19.*

[h] *De nugis Curialium lib. 7. cap. 21.*

may find in him, where he tells you, that these Exemptions did *derogare constitutioni Divinæ.* But the Clergie generally was much against the use of *Infeodations* of Tithes and Churches into Lay hands, although it were practised by some Bishops and Religious Houses; who committed strangely, if they were also of opinion, that the right of Tithes was due to the Preisthood immediatly from the Moral Law, *Quid est enim* (saith *Peter* [i] *Damian*) *Decimas in vsum Sæcularium vertere, nisi mortiferum eis virus, quo pereant, exhibere? Hinc accidit quod & plebesanis justa detur occasio, ut Matricibus suis Ecclesiis obedientiam subtrahant, ut non eis legitima Decimarum persolvant.* And *Alexander* the third directed the Bishop of *Amiens* to [k] decree, that a gift of a Tithe by an Abbot into a Lay-hand, was void, *quoniam sanctuarium de jure hæreditario possideri non debet.* But these are only against Conveyances of Tithes alreadie consecrated to Churches, and so hallowed. But, such as were by their first creation infeodated to Lay men, can no more be accounted (in their own nature) differing from other Temporal and Lay possessions, than Rents charge, Estovers, the tenth sheaf, or the like, at this day granted in fee by one Lay man to another. Neither indeed was the Churches right (what ever it were) to her Tithes properly diminished by such Grants. For if, at this day, the Owner grant

[i] *Lib. 4. epist. 12. Vide etiam Bullam urbani 3. in Biblioth. Cluniac. An. D. 1185.*

[k] *Extr. de dec. c. 15. ad hæc. & vide App. ad Concil. Latran. part. 4. cap. 1.*

grant the tenth ſheaf of lands titheable, to a Lay man, may not the Grant be good, as a Charge out of the land? and yet the Church there hath her right as before. But the truth, it ſeems, was, that in thoſe elder times, Lay men that had created a Tenth into Lay hands, rarely, or not at all, paid any to the Church; and thoſe Infeodations, once made, gave them greater pretence of with-holding what the Church demanded: as if it had been enough to ſay, they muſt not, could not, pay two Tenths out of their land; and that if a Tenth were once created to any man, nothing els might be exacted under the like name. The ſame may bee thought on in Conſecrations to Monaſteries. For if Tithes had been held generally due and paid parochially (as now) then cleerly, although a Lay man had granted a Tenth to another Church or Monaſterie, what other ſoever had been due parochially, had, [1] notwithſtanding the grant, ſtill remain'd payable to the Parſon. How could it have been otherwiſe? And ſo no ſmall number of doubly-paid Tithes had remain'd at this day.

[1] Vide, ſi placet, 44. *Ed.* 3. *fol.* 5 & 44. *Aſſiſ. pl.* 25.

VII. The *Laws* made in this t ime for payment of Tithes, were *Imperial*, *Provincial*, and *Pontificial*. The firſt of the *Imperial*, was made by *Charles* the Great, in a general Aſſembly of Eſtates, both Spiritual and Temporal, under him, in the XI. Year of his reign over *France*

and *Germany*, and in the year of our Saviour, DCC. LXXVIII. it was there ordained, *Ut unusquisque* [m] *suam Decimam donet; atque per jussionem Episcopi sui* (or *Pontificis*, as some Copies are) *dispensetur*. Which Law indeed, with divers other, for true payment of Tithes, were generally made by him before his Empire, which began not till the year DCCC. yet because this was in the same terms received into those Capitularies collected by *Benedictus Levita*, as from him being Emperor, it may well enough be titled Imperial, and it is the first to this purpose extant, which can be at all styled General, and was ordained by both Powers, Secular and Spiritual, to any whole State: unless you will beleive, that in *Scotland* a Law was established by King *Congallus* and his Clergie, about D. LXX. after Christ, for the general payment of Tithes there, according as [n] *Hector Boetius* hath related. *Congallus*, indeed, is by others affirmed to have been very careful for the Clergies maintenace. But it will, I think fall out to be too bold an Assertion of that faining *Hector*, who often, as it were, makes Laws for the *Scotish* Kings, that he may relate them; or else he was deceived by them from whom he took it. No good Authority can justifie such particulars of that Age there. Neither is it to be received otherwise then as fabulous, and proceeding out of that common mistaking of ancient Passages of Church-

m *Conflit. Karoli* edit. à Vito Amerbachio, *cap.* 7. *Leg. Longobard. lib.* 3. *tit* 3. *cap.* 1. *Capitular. lib.* 5. *cap.* 123.

n *Hist. Scotorum, lib.* 9. cautè de Congallo *Buchananus, lib.* 5. Sacerdotes, *inquit*, prædiis aliisque proventibus ditavit. Tà Decimis *adjicere vir doctissimus non ausus est.*

Church-revenues, and confident (but ignorant) application of them to Tithes. But from that Law of *Charles* the Great, was that exaction of Tithes, ſpoken of before by *Alchwin*; and thence are Tithes, in *Anſegiſus* his collection of his Imperials, ſo frequently mentioned, as of known right; and hence alſo had the title of the *German* Biſhops, before ſpoken of, its original. Thoſe Capitularies, both of *Anſegiſus* and *Levita*, were collected by them about the year D. CCC. XL. in both of which frequent conſtitutions are for Tithes, and for the [o] parochial right alſo of them. Yet with them alſo take the Conſtitutions of *Charles* the Great, about the ſame time collected, but publiſhed by *Vitus Amerpachius* in the year M. D. XLV, as alſo others occurring in the collection of *Melchior Goldaſtus*. Theſe, together with the Lawes of the *Lumbards*, have very many conſtitutions of about the beginning of theſe CCCC. Years for this purpoſe; and one only ſhall ſuffice to be here tranſcribed. *De Decimis* [p] *quas populus dare non vult, niſi quolibet modo ab eo redimantur; ab Epiſcopis prohibendum eſt ne fiat: & ſiquis contemtor inventus fuerit, ſi noſter homo fuerit ad præſentiam noſtram venire compellatur, cæteri vero deſtringantur ut inviti Eccleſiæ reſtituant quæ voluntariè dare neglexerunt.* This was made either by *Charles*, or *Lewes* the firſt. But it is falſely refer'd to the Emperor *Lothar*, in the Laws of the

[o] *Anſegiſ. Capitular. lib. 1. c. 155. &c.*

[p] *Benedict. Levit. l. 5. cap. 46.*

Lumbards. It was povided you ſee againſt ſuch as would not give their Tithes, unleſs they were purchaſed of them for valuable conſideration. But the effect that theſe Laws had, was ſhort; the Laitie ſoon diſobeying ſuch commands as diminiſhed their revenues. And it enough appears in the ſtorie of about the year 9 DCCC. XLV, that little or no practice was of any of thoſe Laws of the Capitularies, in behalfe of the Clergy; nothing being more frequent, then not only the denying them what they would have had, but alſo the taking from them what they otherwiſe poſſeſſed. Nor could they have ſufficient remedie for it, either in the Council of *Meaulx*, where, under *Lothar* the firſt, they humbly ſought it, or long afterward, as is manifeſt in the Moniments of the ſucceeding ages. But by the way, whereas ſome (both ſtrangers, and of our one countrey men) out of the joint mention of *Nona* and *Decima* in thoſe Imperial Capitularies of *Charles* and *Lewes* the firſt, fetch an example of a *Ninth* paid to the Church as well as a *Tenth*, and bring it as a character of the times devotion; as if the Tenth had not then been thought enough, unleſs a Ninth alſo, like a ſecond Tenth, had been offered; it is a ridiculus error, and proceeds from groſs ignorance of the Common Lawes, Storie, Councils, and vſe of that age. The Ninth and Tenth there ſpoken of, were only the rent due from the Tenants

9 Vide *Baronium tom.* 10. *An. Do.* 845. & 846. *Flodoard. hiſt. Rhem. Eccleſ. lib.* 3. *Johan. PP.* 8. *epiſt.* 21. 243. 245. 262. 293

nants of Church lands by the ordinary reſervation of the Tenth, as of what was held, by many, of it ſelf due to the Clergy, and of the Ninth, as of the Rent or conſideration to be given to them as to Leſſors for the received profits. So will it plainly appear in a multitude of old [r] authorities, to which I refer you. Neither was the Ninth here thought due otherwiſe, then as among the ancient *Bavarians*, the Tenth only from occupiers of Church Lands. The Tenth of the profits was all that their Laws [f] appointed to be paid for rent to the Church by Leſſees. But alſo very many *Provincial Conſtitutions* were made for the true payment of Tithes about the beginning of this CCCC. Years, as in the Council of *Mentz* in the year DCCC. XIII. *Admonemus atque præcipimus ut Decimas Deo omnino dari non negligatur.* Which words were received alſo into the Imperials: and with them agree divers Councils, held about the ſame time, as the Councils of *Rheims*, the fourth of *Arles*; the ſecond of *Chalons*, and many other following. And in *Scotland* (if we may believe the [t] Author, for though he ſpeak very good language, yet he is of no ſuch ſound credit) about the year DCCC. XL. King *Gregorie* in his Laws for Church liberties, ordain'd that the Spiritual Court only ſhould have coniſans of Tithes; which had been perhaps all one as to have eſtabliſhed them to be generally due: for

r *Anſegiſ. lib* 1. *cap.* 163. *lib.* 2. *cap.* 2. *Levit. lib.* 5. *cap.* 145. *Concil. Turon.* 3. *cap.* 46. *Mildenſ. An. Do.* 845. *cap.* 62. *Flodoard. hiſt. Rhemenſ Eccliſ. lib.* 3. *cap.* 4. *Vide & Goldaſt. conſtit Imp. tom.* 3. *pag.* 648. & quæ adjecta ſunt *C.* 16. *q.* 1. *c.* 59. *edit. Grat.*

f *Leg. Baiuariorum tit.* 1. *cap.* 14. *de Coloniis & ſuriis Eccleſia.*

t *Hector. Bott. hiſt. Scot. lib.* 10.

by the opinion of that Court it is likely they would then also have been judged so. And also among the ordinances [u] of King *Macbeth* about the year M.LX, the same Autor puts one in these words, *Decimam partem Terræ nascentium pastoribus Ecclesiarum liberè conferto*: Many more of like nature are, where we speak severally of the *English* Constitutions. For *Pontificial* decrees, Publique moniments, I think have none in expresse termes of command (except you look back to that [x] fain'd one of Pope *Damasus*) ancienter then that attributed to [y] Pope *Nicholas* the second. *Præcipimus* (saies he) *ut Decimæ & primitiæ seu oblationes vivorum & mortuorum Ecclesiis Dei fideliter reddantur à Laicis, & ut in dispositione Episcoporum sint; quas qui retinuerint à Sanctæ Ecclesiæ communione separentur.* The self same words [z] are also vnder the name of his next successor *Alexander* the second. That of Pope [a] *Leo* the fourth, about the year DCCC. L: *De Decimis, justo ordine non tantùm nobis sed etiam majoribus nostris visum est, plebibus tantùm, vbi sacrosancta baptismata dantur, debere dari*, may be reckon'd for a Canon for the right of Tithes, if you will: but it seems rather it was at first a Declaration of an Opinion then a Constitution. But both the other and that, with divers passages also out of *S. Augustine*, *S. Ambrose* and others, and those old Provincial Councils, that make for the general right of Tithes, were con-

[u] *Idem lib.* 12.

[x] *Sup. cap.* 5.

[y] *A.D.*1059. *in Synod. Rom. &c.* 164.2.c.3.

[z] *Dist.*32.c.6. *prater* § *deinde.*

[a] *c.*16.q.1.c. 45.

confirmed for general Canon Law in *Gratian's* [b] *Concordia diſcordantium Canonum*, by Pope *Eugenius* the third in the year M. C. LI. or preſently after. For however ſome Canoniſts ignorantly otherwiſe place the Collection of that firſt part of the Body of the Canon Law; it is moſt plain that it was in that year collected by him, which is beſt juſtified by a moſt ancient copie of it writen before the *Paleæ* were inſerted, and remaining in the *Vatican*, with this [c] inſcription: *Decretum Gratiani Monachi Sancti Felicis Bononienſis Ordinis ſancti Benedicti compilatum in dicto Monaſterio, Anno Domini milleſimo centeſimo quinquageſimo primo, tempore Eugenii Papæ Tertii.* Enough other teſtimonie is of it. And in the Council of *Cleremont* held in M. XCV, by Pope *Vrban* the ſecond, it was decreed, *Ne laici Decimam partem de laboribus ſuis retineant.* Some other paſſages of Popes are about that time againſt the ſelling of Tithes, which they call Simonie. And in *C.* 16. q. 7. c. 1. after the paſſage of *Gregorie* the ſeventh, before cited out of his Council of *Rome* againſt feudal tithes, theſe words follow as if he had continued them; *Oportet autem congruentiùs nos Decimas & primitias, quas jure Sacerdotum eſſe ſancimus, ab omni populo accipere, &c.* Which comprehend in them a Conſtitution. But neither theſe or any of the reſt that follow there, are in that Council of *Gregorie*, neither find I whence *Gratian*

b *C.* 13 q. 1. & 2. 16. q. 1. 41. & *ſeqq. &c.* 16. q. 7. paſſim.

c Vide prolegom. ad *Corpus Juris Canonici*, auſpiciis *Gregorii* 13. editum, & *Abbatum uſpaginſem.*

d Regist. lib. 9. epist. 14.

Gratian had them. But an Epistle d of that *Gregorie* is extant, wherein among other admonitions to some Princes of *Spain* (after such time as the profession of Christianity there, was purged of some *Gothique* corruption, by a e Council held under *Richard* Abbot of *Marseilles*, the Pope's Legat in ML. XXVI, so I understand that reference made, in the Epistle, to a kind of new conversion to the Faith) he persuades them, *Decimas, quæ ad usum tam ipsorum quàm Eccl'esiarum & pauperum proficiant, dare, totique regno indicere. Quod quidem nulli debet grave videri, pro meliori parte, videlicet semper victura anima quemque decimam Deo offerre, cùm pro morituro corpore plurima gentes conjugibus suis tertiam rerum legibus compellantur exsolvere.* He admonishes, you see, and persuades, but commands not. He thought not it seemes, his own Power great enough to have had effect in disposition of a Tenth part of every mans revenue, and therefore abstain'd from Command. Neither could he have pretended the authority of any Law or Canon generally received into practice. For neither in his time, nor long after, till about MCC. were Tithes so generally paid (as since) without special Grant or Consecration (as is sufficiently shewed:) neither had any General Council as yet once remembred the Dutie, or the name of Tenths. The first of the *General Councils* that mentions them, is the Ninth, that is, that of *Lateran*,

e vide Mariannæ de reb. Hisp. lib. 9. cap. 11.

teran, held under *Calixtus* the ſecond, about M. C. XIX, extant in the *Vatican*, and firſt publiſht in the late Edition of the *Greek* General Councils printed at *Rome* by autoritie of the preſent Pope *Paul* the Fifth, and now newly inſerted into *Binius* his laſt [f] Edition. But they are there ſpoken of only, as they were receiv'd by ſpecial Conſecrations. And in the General Council of *Lateran*, held in M. C. XXX. under *Innocent* the Second, feudal Tithes are in the ſame ſyllables mentioned, as in the Decree of *Gregorie* the ſeventh, before cited out of the Council of *Rome*. And this alſo, taken out of the *Vatican*, is to be found only in thoſe two late and fulleſt Editions. But of the General Councils (before that Edition at *Rome*) ordinarily known and read, the firſt that names Tithes, is the Eleventh, that was held under *Alexander* the third, in M. C. LXXX. But there, Infeodations of them into Lay hands, and Conſecrations or arbitrarie Conveyances of them to [*] Religious Houſes, without aſſent of the Biſhop, are only forbidden. Neither was any Canon of a General Council as yet found, that purpoſely commanded payment of them; nor any that expreſly ſuppoſed them a dutie of common right, before [g] that of *Lateran* in the year M. CC. XV. held under Pope *Innocent* the Third, about which time, Eccleſiaſtical Autoritie became more powerful, the Canons were more receiv'd

[f] *A. D.* 1618.

[*] Vide infr. c. 7. §. 1.

[g] *Cap. 43. & in extr. tit. de Dec. c. 33. cum non ſit.* & vide caput prox. §. 1.

into practice (that before were little, especially herein, obeyed) and parochial right to tithes grew to be more established; whereof, more in the next and last part of our general Division, and in the *English* practice. But if that Canon in the *Lateran* Council, held under *Alexander* the Third, against arbitrarie Consecrations of Tithes without assent of the Bishop, might be understood literally, and of new Tithes so created (neither is any thing in the Council that denies that to be the meaning of it) then needed we not perhaps seek further for the cause of that Assertion amongst our common Lawiers, *That, before the Council of* Lateran, *every man might have given his Tithes to what Church hee would.* Who ever observes the practice of the preceding time only, and the words both of that Council, and, to the same purpose, of the other held under *Calixtus* the Second, may well enough be perswaded, that the intent of those Canons was no otherwise. But in regard we find that Canon of *Lateran*, under *Alexander* the Third, to be differently interpreted by *Innocent* the Third, within twentie or thirtie years after the making of it, and understood only of Feudal Tithes formerly granted out from the Church into Lay hands (according as the Canonists after him also take it) we cannot be altogether so secure of that other interpretation. *In Lateranensi Concilio* (saith[h] *Innocent*; meaning, that under

[h] *Extr. de his quæ s. a prælat. assens. capituli. c. 7. cum Apostolica.*

der *Alexander* the third *(eſt inhibitum ne quælibet Religioſa perſona Eccleſias & Decimas de manibus Laicorum, ſine conſenſu Epiſcoporum recipiat ; per quod indirectè datur intelligi quòd ſufficit conſenſus Epiſcopi, ut licitum Eccleſiæ ſit Decimas de manibus recipere Laicorum. Hoc autem de illis Decimis intelligimus quæ Laicis in feudum perpetuò ſunt conceſſæ.* But we muſt take it upon his word only, and the credit of the following Canoniſts, that the Canon was ſo to be underſtood. They may, as they will, underſtand it by judicial application. But you may, at leaſt, doubt ſtill, that the Hiſtorical underſtanding of it, is to be had out of arbitrarie Conſecrations before practiced. And it was even equal to ordain, that Lay men ſhould not arbitrarily conſecrate, and that they ſhould not conſecrate without aſſent of the Biſhop ; every Biſhop (I think) being ſuppoſed a carefull Obſerver of the former Canons, which would have induced parochial right to Tithes, and general payment. So that what in this kind might not be done without his aſſent, was conceived as likely to be never done to the Churches prejudice. Let everie able Reader judge here. But let him not be much ſwayd with the rabble of late Canoniſts, that go away cleer with this of Pope *Innocent.* When the Pope had ſaid ſo, they made no ſcruple of the truth of it ; and one takes it (as their faſhion is) from another with too much eaſie

credulitie. But although this be not ſufficient ground for that aſſertion of our common Lawiers (which cleerly, being rightly apprehended, is true; though lazie ignorance crie againſt it, even to hoarſeneſſe) yet enough other will be found, whereof more toward the end of the tenth Chapter.

Of the time from M.CC. *or neer thereabouts, till this day.*

CAP VII.

I. *The Canons of* General Councils, *and* Decretals, *for* parochial right *in Tithes* (*not formerly otherwiſe conveyed*) *which now become more eſtabliſhed.*

II. *The* opinion *of the* Canoniſts, *in the queſtion of what* immediat Law *Tithes are due by, is, that they are payable* jure divino.

III. *How the ſame qneſtion is determined by the opinion of the* Schoolmen.

IV. *Of thoſe that held them* mere Almes.

V. *The* opinion *in* Divinitie, *that concludes them due* jure divino. *With a Determination of the Vniverſitie of* Oxford *touching Perſonal Tithes.*

VI. Laws, Cuſtoms, *and* Practice *of* France, *in exaction of them. Of their* feudal Tithes *at this day.*

VII. Laws, Cuſtoms, *and* Practice *in* Spain, *touching*

touching the general payment of Tithes. Tithes there, in Laymens hands.

VIII. Cuſtoms *and* Infeodations *in* Italie; *Payment in* Venice, in Germanie: *Of the* Hungarians, Polacks, Swethians, *and others, touching the duty and poſſeſſion of Tithes.*

IX. *Of Tithes in* Scotland. *With an Example of an Appropriation of Churches and Tithes there, by* Robert de Brus. *And ſomthing of Tithes in* Ireland.

IN theſe following times, the *Canon Law* grew to be of more force, and *Parochial right* (through the Decrees made againſt that former courſe of arbitrarie Conveyances, and from the paſſages of Canon Law, that ſuppoſ'd the *general right* of Tithes) became to be more eſtabliſhed. But the Opinions of *Canoniſts* and *Divines* have been and are much different in the queſtion, Upon what *Law* the general right of them is immediatly grounded. But by the *Practice* of the *Common Laws* (for ſo much as I have read) of all Chriſtian States, they are ſubject to *Cuſtoms*, and that ſome times as well in *non payment* as in *payment* of a *leſs part*. And *Infeodations* of them into Lay hands, yet continue in *France*, *Spain*, *Germany*, and elſe where. And of *Cuſtoms* only and *Infeodations* we ſhall principally ſpeak in the practice of this time. For, what ever might here otherwiſe be remember'd touching Compoſitions, Exemtions, or

ſuch like, is but a meer conſequence of thoſe Cuſtoms, and of the Opinion that makes them due only by Poſitive, Human, or Eccleſiaſtical Law.

I. It is ſufficiently manifeſted in the practice of the former CCCC. Years, that the Laitie did uſually convey their Tithes by *Conſecrations* and *Appropriations* to what Church they would, and by *Infeodations* to Lay men. Their Infeodations where forbidden by the [a] General Council of *Lateran*, in M. C. LXXX. Whence that moſt known Canon *Prohibemus*, before cited, was taken into the Bodie of *Gregories* Decretalls, and hath ever ſince been, and ſtill is, in autoritie, and that alſo in the ſecular Laws of *France* eſpecially. It was in the ſame Council ordained, That no religious Orders ſhould receive any Appropriations or Conſecrations of Churches or Tithes, without aſſent of the Biſhop. *Eccleſias & decimas* (are the words) *de manu Laicorum, ſine conſenſu Epiſcoporum tam illos* (that is, *Templars* and *Hoſpitalars*, againſt whom the proviſion was cheifly made) *quam quoſcunque alios Religioſos recipere prohibemus.* This was confirmed in the General Council of *Lateran*, held under *Innocent* the third, in the year M. CC. XV. And a Canon of the General Council of *Lateran*, under *Calixtus* the ſecond, in the year M. C. XIX. (wherein parochial Miniſters where alſo forbidden to receive Tithes,

[a] Videſis. *cap.* 14. & 9. *edit. Romana & extr. de Dec. c.* 19. & *de Prob.* & *dig. cap.* 31. *in Lateranenſ. tit. de jure patron. c.* 17. *nullus. & de his qua fiunt à prel. c.* 7. *cum Apoſtolica.*

Tithes, or Churches, from the hands of Lay men, by Inveſtiture eſpicially, *Abſque conſenſu & voluntate Epiſcopi*) was afterward, in divers Epiſtles of Pope *Alexander* the Third, received [b] and confirmed. And although many Decrees were before againſt thoſe Conveyances, yet till theſe General Councils (under *Alexander* and *Innocent*) neither was the Autoritie of the Church ſo powerful, neither where Epiſtles ſent from *Rome* ſo frequent, to put that in execution, which had ſo been there eſtabliſhed againſt that challenged right of the Laitie. But by this time, when the arbitrarie diſpoſition of the owner was thus provided againſt (reference being made to the Biſhops aſſent, that was bound to ſquare all things by the [c] Canons which would have Tithes paid parochially; and became to be much more obeyed then before) it grew frequent, to have Decretal Epiſtles ſent from *Rome* into every Province, both to ratifie the former Conſecrations and Appropriations; (which the Popes [d] began alſo, at pleaſure, to declare ſometimes void, if made by Lay men alone) and alſo to exact parochial payments of other Tithes, not canonically conveyed out of the Pariſh: and the reaſon ſometime was added; that is, [e] *Perceptio Decimarum ad Parochiales Eccleſias de jure communi pertinet.* And the General Council [f] of M. CC. CV. had taken it cleer, and ſo expreſt it, that *in ſignum univer-*

b *Extr. de jure patr. c.* 10. 11. 21. & *de Inſtit. c.* 3. *ex frequentibus & Append. Concil. Lateran. part.* 15. *cap.* 18.

c *C.* 16. *q.* 1. *c.* 45. & 56.

d Vide *Innocent* 3 *in extr. de his quæ ſ. à præl. c.* 7.

e *Extr. de dec. in c.* 29. *cum contingat.*

f *Ibid. c.* 33. *cum non ſit.*

universalis Dominii quasi quodam titulo speciali sibi Dominus Decimas reservaverat: And after a few words, the Canon is concluded with *Decimare cogantur Ecclesiis, quibus de jure debentur*. And the action for Parochial Tithes in those times, as now, is called [g] *jure communi fundata intentio*; that is, by common right, Tithes prædial and mixt were due to the Rector of the Parish (were he Bishop or Priest) if they were not otherwise, by special title, enjoyed by some other Church, or discharged by Canonical Exemption. But how little this common right had before been practised, appears not only in what is alreadie declared, of the use of the former time, and in the doubts made by *Gratian* in the Decree, and Pope *Lucius* the Third, *Alexander* the Third, and others in their Epistles touching it, but also in other Occurrances of somewhat before the beginning of these CCCC. Years, amongst which you shall find, that both the religious and secular of the Clergy would usually take Covenants from their Tenants, to pay them the Tithes, and so prevent the Parson of the Parish where the land lay. If parochial right had then been common, how could such a Covenant have prevented the Parson? That practice is both related and remedied in the [h] General Council of *Lateran*, of M. CC. XV. And an example of it in the Archbishoprique of *Matera* is remaining among the Decretals [i] of *Innocent*

[g] *Ibid. c.* 31. *dudum adversus.*

[h] *C. 56. & extr. de pactis c.* 17. *plerique* & *videsis Append. ad Concil. Later. part.* 13. *cap. 6.* 1 *Tom.* 3 *Epist. Decretal. li.* 2. *p.* 483.

nocent the Third, where alſo it appears, That the Archbiſhop had complain'd to the Pope, That the Land-Occupiers in his Dioceſe uſed to divide their Tithes at their pleaſure, and arbitrarily give part to the Church, part to the poor, part to their kindred. For which he had remedie by Pontifical Decree. Hereto you may adde that of an old Council of [k] *Tribur*, in DCCC. XCV. *Ubi quis Decimas perſolvebat vivus ibi ſepeliatur & mortuus.* As if every man, by the choice of the place of his devotion, in paying his Tithes, might make it his Pariſh. And when *Alexander* the Third about the year M. C. LXXX. was to anſwer the doubt touching Parochial right of Predial Tithes (that is, whether they where due *intuitu territorii*, in regard of the limits within which they grew, or *obtentu Perſonarum*, by reaſon of the perſon, and ſo to be paid to the Church whereſoever the Owner for the moſt part received the Sacrament and heard Divine Service) he knew not how to determin it; and withal acknowledged, that although it had been often moved, it was never reſolved. *Sanè* (ſaith [l] he) *cum hujuſmodi quæſtio temporibus prædeceſſorum noſtrorum mota fuerit, non determinata, aliis intuitu Territorii, aliis Perſonarum obtentu Decimas aſſerentibus debere perſolvi, non eſt nobis facile certum tibi dicere*: which are the words of that Epiſtle; a part whereof is in *Grevie's* [m] Decretals. So, that although by the

[k] *C.* 13. *quæſt.* 2. *c.* 6. *ubicunque*, in Concilio ipſo, *c.* 15.

[l] *Epiſt. Decretal. lib.* 3. *Ms. in* Biblioth. Cottoniana.

[m] *De Decimis, c. cum ſint.*

Canons they would have had a universal payment of Tithes, and although some much ancienter [n] autoritie be in that Law for Parochial payment, yet they had long before, and about the beginnig of this last CCCC. years, so much controversie touching Parochial right, that even thence alone you may see, it was not so much as, in Opinion, established. Enow more like Examples are of that time. And you may observe, that where Pope *Alexander* doth by Decretal command a Parochial payment in the case of the Monks of [o] *Boxley* (for so you must read in *Gregorie*; not *Bosse*, as it is in the most polite Edition) yet his ground is from a use of Parochial payment in that particular; without which, he had been as uncertain there, as he and others are in Epistles of that time. But so far also was the former course of *arbitrarie Consecrations* now withstood, that not only the Lay-owner might not of himselfe consecrate the right of his Tithes at will, but also, although the Bishops assent had joyned with his in conveying any Tithes (except only such as were infeodated to him before the Council of *Lateran* of M. C. LXXX.) the Conveyance had been declared void; and to that purpose only, of passing Feodal Tithes out of Lay hands to the Church, was the Bishops assent [p] decreed to bee sufficient. But however, through those Oecumenical and Pontificial Decrees, a more certaintie of Parochial

n Vide c. 16. qu. 1. can. 45. & 56.

o *Extr. tit. de Dec. c. 4. commissum. & append. ad Concil. Lateran. part. 13. cap. 12.*

p *De his quæ fiant præl. sint conf. 6. 7. cum Apostolica.*

chial right was now begun; and though thoſe old Canoniſts alſo, Pope *Innocent* the fourth, Cardinal *Hoſtienſis*, and ſome others, about the year M. CC. LX. writing on the Decretals, took Parochial right as a thing cleerly eſtabliſhed in Law, yet it is reported by ſome Ancients of good credit, that ſufficient remedie was not fully provided againſt that practice of the former courſe of Arbitrarie diſpoſitions of Tithes, till the general Council of *Lions*, held under Pope *Gregorie* the Tenth, in the year M. CC. LXXIV. in which, they ſay, it was conſtituted, *Ut nulli hominum deinceps liceat Decimas ſuas ad libitum, ut anteà, ubi veliet aſſignare, ſed Matrici Eccleſiæ omnes Decimas perſolverent.* So *Randal Higden* the Monk of *Cheſter*, *Henrie* [q] *Knighton* Abbot of *Leyceſter*, and *Thomas* of *Walſingham* a Monk of *S. Albons*, tell us; and all three of them liv'd but about C. years from the time of that Council, and might ſo perhaps, have had for it ſome ancienter Autoritie from ſome now loſt moniments. And upon this, doubtleſs, was that aſſertion corruptly related in the printed Examination of *W. Thorp* before *Arundel* Archbiſhop under *Henrie* the forth; where he anſwers, *That one* Pope [r] Gregorie *the tenth ordained new Tithes firſt to be given to Prieſts now in the new Law.* But the bodie of that Council (which was firſt publiſht only in the late Edition of the General

[q] *in Biblioth. Cottoniana.*

[r] Apud *Fox. in Hen. 4. pag. 494.*

Councils at *Rome*, and is now alſo in the laſt Edition of *Binius*) hath no ſuch matter in it. One Canon is there, ſpecially againſt [f]Alienation of Revenues of the Church by Clergy men, and another, againſt Uſurpation [t] of them by Lay-Patrons in time of Vacancie; but neither out of them, or the reſt, can you extract what thoſe Monks have related. But although they might err in the relation of the Canon, yet, doubtleſſe, they had ſome ſpecial memorie, that Parochial right to Tithes had been but of late years, and ſometime after M. CC. receiv'd into the more known and practiced Law; although the Doctors ſo confidently before talke of it. For we muſt not doubt, but that thoſe elder Canons, notwithſtanding their great autority, were by moſt different degrees of time receiv'd into uſe, and in ſome places, not till long after M. CC. as wee ſee particularly in that of the practice in the Dioceſe of *Palentia*, till M CCC. XXII. Which was, that every man, whereſoever he dwelt, yet might declare himſelf to be of what pariſh he would, and to that pariſh only give his Tithes: Which was remedied by a Council then held at *Villadolid*, under *William* Biſhop of *Sabina*, the Popes Legat; where he begins with, *Parochiarum diviſio a ſanctis patribus inſtituta certitudinem Parochianorum & Decimarum debitam ſolutionem induxit.* For in deed, Parochial payment regularly was now grown,

[f] Extat *in lib. 6. tit. de reb. Eccleſ. non alien. c. 2. hoc conſultiſſimo.*

[t] *In 6. tit. de Elect. cont, c. 13. in generali.*

grown, by the Canons gaining force, to be the only *debita ſolutio*. The next autoritie of a General Council for Parochial right (after that of *Lateran*; wherein yet nothing directly conſtitutes it, but rather it is ſuppoſed, as of former time) is the Condemnation, in the Council of *Conſtance*, of *Wickleſes* aſſertion, that Tithes were meer Almes, and that Pariſhioners might, *ad libitum ſuum* (as his poſition was) *eas auferre propter peccata ſuorum Prælatorum*. And ſince that, in the general Council of * *Trent* under *Pius* the fourth, about M. D. LX. this Canon was publiſhed. *Non ſunt ferendi qui variis artibus Decimas, Eccleſiis obvenientes, ſubtrahere moliuntur, aut qui ab aliis ſolvendas temerè occupant & in rem ſuam vertunt, cum decimarum ſolutio debita ſit Deo. Et qui eas dare noluerint aut dantes impediunt, res alienas invadunt. Præcipit igitur ſancta Synodus omnibus cujuſcunque gradus & conditionis ſint, ad quos Decimarum ſolutio ſpectat, ut eas (ad quas de jure tenentur) in poſterum Cathedrali aut quibuscunque aliis Eccleſiis, vel Perſonis, quibus legitimè debentur integrè perſolvant. Qui verò eas aut ſubſtrahunt, aut impediunt, excommunicentur; nec ab hoc crimine, niſi plenâ reſtitutione ſecutâ, abſolvantur.* For Popes Decretals of this time, I refer you further to the Laws made or received in *England*.

* *Seſſ. 25. de reformatione. cap. 12.*

II. In the Opinions that have been ſince the beginning of theſe CCCC. Years, touching

Tithes; the cheifeſt to be obſerved here, are thoſe which determin, *by what immediat Law Tithes are payable.* For however very many other queſtions, about the dutie of them, are uſually diſputed, yet reſolve but this, one way or the other, and moſt of the reſt that follow, about *Cuſtoms*, *Appropiations*, *Exemptions*, and ſuch more, will ſoon have little doubt. This point hath been controverted both betwixt *Canoniſts* and *Divines*, and between *Divines* and others of their own profeſſion. The *Canoniſts* (except very few) with one conſent grounding themſelves upon the letter of ſome of thoſe paſſages of Provincial Councils, of Fathers, and of Popes, before remembred, generally deliver, That Predial and Mixt Tithes are due to be paid *jure divino*, which is commonly taken for the *Divine Moral Law*, and they uſually cite alſo the *Levitical* Precepts, to juſtifie it. Yet do they allow the right of former Tithes, Canonically ſetled by Conſecrations, Appropriations, and Exemptions alſo, for the moſt part. For to thoſe they require Pontificial Confirmations, or a Supply of them, by ſuch preſcription of time, as may ſuppoſe them. For they take this Eccleſiaſtique revenue to be no otherwiſe due to the Clergy by common right, but that the Pope (whom they, to the utmoſt, maintain, as they have reaſon; for out of the Pope's autoritie, firſt came their general profeſſion, as it now remaines one) may

as

as a ſupreme Steward of the Clergies maintenance, diſpoſe of this or that particular part of it. This is their common Opinion, although ſome, in the Point of Exemptions, have made ſcruple. But where none of thoſe ſpecial Titles precede, there they cleerly agree alſo, that by common right, all Predial and mixt Tithes are due parochially. Neither need [u] the Rector in his Libel upon his *Actio Confeſſoria* (which is the general name of ſuch actions as lie for demand of incorporal rights, as with us, our *Quod permittat Quare impedit*, *Droit d'avouſon*, and the like) propoſe more then that the increaſe is within his Pariſh; and the other Titles (if any be) muſt be ſhew'd in the Exception, or Anſwer. But by the way, though the Doctors commonly ſuppoſe the Action for tithes to be *Confeſſoria*, and grounded upon common right, yet that great and ancient Lawier, Biſhop *Durand*, or *Speculator*, would have them demanded by the *Condictio ex Canone*, that is, as we call it, by *Action upon the Statute*. The Canons whereupon he would have it grounded, are thoſe paſſages of *S. Hierom* and *S. Auguſtine* in *C.* 16. *q.* 1. *c.* 65. *&* 66. and he takes for his autoritie, why this kind of Action ſhould be brought, that of [x] *Paulus*, out of the Imperials, *Si Obligatio lege nova introducta ſit, nec Cautum eadem lege, quo genere Actionis experiamur, ex lege agendum eſt.* So that as *ex Lege* in the Imperials, ſo *ex Canone* in the Pontifi-

[u] *Speculator lib.* 1. *part.* 3. *tit. de Decimis. Proſper Ferniat. Criminal. deciſ. Rota Rom.* 219. *n.* 13. alii paſſim.

[x] *ff. de condict. ex l.* 1. *c.* 1. *unic.*

Pontificial Law, the Action ſhould be brought. He liv'd long ſince, and perhaps, in regard of the various practice that had preceded againſt the common opinion of his profeſſion touching the common right, he thought it moſt ſecure for the Plaintiff, to ground his Libel upon the Canon, rather then upon common Right. But for *Perſonal* Tithes (which yet they agree not all to be due *jure divino*; although Pope [y] *Innocent* the fourth makes it a wonder to ſee any man deny it, and divers of them follow him; the old precedents alſo of Libels in *Speculator* being equally for theſe, as for predial) they are held payable only to the Church, where the Owner, for the moſt part, receives the Sacraments and Divine Service; not where the gain is made. Neither in them is any regard had to the pariſh. Whence it comes, that *Iews* and [z] *Saracens* (becauſe they have no perſonal uſe of the Evangelical Miniſterie) are to pay none by this Law, ſaving in caſe where they hinder the continual payment of ſome former perſonal Tithe had from Chriſtians. The beſt autoritie they bring for perſonal Tithes is that in *Deut.* XII. where *Tithes and the Offerings of your hands* are ſpoken of. By reaſon of that moſt received ground amongſt them, That the Tenth is due to the Church *jure divino*; their moſt common opinion is alſo, that every man is bound to pay the whole Tenth, or the value of the whole Tenth, of

y *Ad tit. de Paroch. & al. Paroch. extra ſignificavit.*

z *Panormit. & gl. ad c. tua nos, tit. de Decimis*

of all encreaſe, notwithſtanding any cuſtom or preſcription to the contrarie. Indeed, no reaſon is, that a cuſtom ſhould take away what God had immediately, and, by his Moral Law, eſtabliſhed. The conſequent is good, were the antecedent cleerly proved. But ſome of them, and ſuch as are of no ſmall name, deliver their Law to be only, that cuſtom cannot wholly diſcharge any Land of Tithes, but it may diminiſh the *quota*, or bring them to a leſſe quantitie, or value; that is, that a cuſtom to pay a Twelfth, Twentieth, or leſſe, is good. This ſome alſo allow only in cuſtoms immemorial, which they ſuppoſe to have the force of a Papal priviledge or Exemption. But their common and received opinion is, that in Predial and Mixt, no preſcription or cuſtom to pay any leſſe part or value then the Tenth, or *de modo decimandi*, much leſſe *de non decimando*, can be good. (Which well agrees with the Civil Law alſo. For by a Reſcript of the Emperor *Anaſtaſius* [a], no preſcription may be of non payment of all or a leſſe part of Tributes, Subſidies, or other Rents of the publique Treaſurie; that is, of ſuch things as are due to the Emperor *in ſignum univerſalis Dominii*, as Tithes are ſuppoſed to God and his Miniſters.) Except only, where the certaintie of ſome equall yearly payment, without regard to every annual encreaſe, may be adjudged to be equivalent to a Tenth, by reaſon of the incer-

[a] *C. tit. de Præſcript. 30. vel 40. ann. l. 6. comprit* ſed & vide *ibid. Bald. Cyn. & Salicetum.*

taintie of ſterilitie or fruitfulneſs. In this b caſe they allow a Cuſtom, although the Tenth of every particular year be not paid; becauſe, *Eccleſia*, they ſay, *poteſt ſe habere ad damnum vel lucrum* indifferently. But thoſe other common opinions of theirs are ſo frequently obvious, that to cite Autorities for them, were but to imitate *Rablais* his *Bridoye*. Yet wee may ſpecially remember, that the Doctors of the *Rota* (of *Rome*, I think) according to their profeſſion alſo above C. years ſince, determin'd c *quod quota Denaria eſt de jure Divino hodierno die*. But ſome Canoniſts withal are, and thoſe of no ſmall note, that agree, the determination of the Tenth to be only *de jure Eccleſiaſtico*, and that no more *Jus Naturale*, or *Divinum Morale*, is in it, then what commands a competence of meanes to be given to the Prieſthood. So d *Couarruuias*; ſo, ſome others. But few enough are of this opinion. All that are of it, make now doubt of the right of Cuſtoms (provided alwayes, that a ſufficient revenue be poſſeſſed by the Miniſter) but allow the payment of them to be diminiſhed or taken away by Cuſtom or Preſcription. But they are generally againſt the poſſeſſion of *Feudal Tithes* held by Lay men (which they ſuppſe, but falſely, to have all had beginning from the Church) although Infeodated before the Council of *Lateran*. Yet indeed ſome of them expreſſe an allowauce of them; but that is rather in mingling

b *Gl. & Panormitan ad c. in aliquibus extr. de Decimis, alii.*

c *Petr. Rauenn. apud Majorem in ſent. 3. diſt. 37. quæſt. 36.*

d *Variar. Reſolut. lib. 1. cap. 17.*

ling common Laws with their Canons, then writing as Canoniſts. The common Laws of all Nations (where feudal Tithes are; and I think certainly, in all Chriſtian Nations feudal Tithes at this day are found) allow them now, and ſuffer the Canons to have no power over them. And thence is it (leſt they ſhould groſſely determin againſt ſuch poſſeſſions as the Church anciently, as well as the Laitie, had by Infeodations ſetled, and poſterity ſtill maintain'd) that ſome receive into their Concluſions an admittance of what their own profeſſion abhors. Which may not be amiſſe ſaid alſo of ſuch of them as maintain a Cuſtom in the *quota*, or the like. For that is done rather by ſtriving to conform the Canons to the common Laws, or ſecular Conſtitutions of the ſtate where they live (as our Civilians in the practice of the ancient Canon Law, do here alſo) then by judging according to the bodie of the Canons, that regularly allow no ſufficient exception againſt parochial payment of the whole predial Tenth, but only Papal autoritie, or a Title canonically ſetled in ſome other Church. And the better to make theſe Infeodations ſtand with their Opinions, they have alſo a uſual diſtinction of *Jus percipiendi*, and *fructus decimarum*. The *Jus percipiendi*, they ſay, cannot be transfer'd, nor ever was, by the old Infeodations, becauſe every lay-man is capable of it. But the *fructus Decimarum* only, as they teach, is

what paſſed, and is ſtill poſſeſſed, in conſideration that the poſſeſſor ſhould defend the Church from Heretiques and Tyrannie. The ſumme of what the old Canons have, both againſt ancient and new Infeodations, is in the former Chapter noted; and according to them, how that diſtinction will hold, I ſee not. But, among them, great opinion is alſo, that all Feudal Tithes are to be reſtored to the Church, and that he which holds them, may not lawfully paſſe them over to another Lay-man; but may only, with aſſent of the Biſhop, give them to ſome Church. *Nec multum refert quæ Eccleſia habeat dummodo extirpentur à Laico*, as *Panormitan* ſayes. And to this, they abuſe that Canon *Prohibemus*, of the Council of *Lateran*, that was not indeed made againſt Tithes then infeodated, but only againſt new Infeodations, as Pope *Innocent* the Fourth there well teaches. For, ſaith he, *Non loquitur de Decimis infeodatis, ſed de aliis malè detentis.* Which juſtifies what is the former CCCC. years, againſt the received Interpretation, delivered.

III. The *Divines*, of ſince the beginning of this time, have had their ſeveral Determinations and Doctrines upon this point, and thoſe may be, for method, put cheifly in a Three-fold difference; although rather the ſecond Doctrine (as preſently will appear) were but an iſſue of the firſt: And the cheif queſtion among them comes to this, Whether, by God's immediat Moral

Moral Law, the Evangelical Prieſthood have a right to Tithes, as to their Inheritance, in equal degree, as the Lay man hath to his Nine; or if they have them only, as by human Poſitive Law, and ſo given them for their ſpiritual labor? That is, in breif, Whether by original diſtributive Iuſtice, or by commutative, they are payable? although, in the Opinion which wee ſhall here make the third, all Poſitive or human Law be, for the moſt part, neglected; whereof, more preſently. But in that (which we here make the firſt of thoſe three Opinions) it hath been held, that the Tenth conſidered *quoad quotam partem*, or, as it is, a determined part, and denoted from that number, is due only by Law Poſitive and Eccleſiaſtical; but, *quoad ſubſtantiam ſuam*, or *Cleri ſuſtentationem*, or in regard to it as it denotes a neceſſary or competent part of the maintenance of the Clergy, that is due by the *Divine Moral Law*. And to the purpoſe of this diſtinction, they interpret the *Levitical* commandments of Tithes; and deliver that *quoad ſubſtantiam ſuam*, or as it was generally for the maintenance of the Miniſterie in the *Iewiſh* Church, it is *Moral* or *Natural*, there being (according to conſideration of it ſo far) the very Character of writing in the Tables of mens hearts; that is, That Spiritual Laborers are to be rewarded with temporal bountie, as every laborer is worthy of his hire. But *quoad*

quotam partem, It is, they ſay, a Judicial (or Ceremonial, as ſome will) and that it hath been brought into the Law of the Goſpel by Eccleſiaſtick Doctrine and Conſtitutions (both which we have before related) proceeding from it only *per vim ejus exemplarem*, or by imitation of the *Jewiſh* ſtate, ordered by the Almightie; and not in that regard *per vim obligativam*, or any continuing force of it under the Goſpel. And that the Church was not bound to this part, but freely might as well have ordained the payment of a Ninth, or Eleventh, according to various opportunitie. This is commonly taught by the old Schoolmen, *Hales*, *Aquinas*, *Henricus de Gandavo*, *R. de Media Villa*, Cardinal *Cajetan*, and divers others; (but fulleſt, in my judgment, by *Joh.* [e] *Major*) and maintained by great men, that in our times follow their wayes of diſquition. The firſt that expreſly made this diſtinction, was that *Alexander Hales*, that lived about M. CC. LXXX. and thus [f] determin'd, *Præceptum de Decimis eſt præceptum Judiciale. unde non eſt dicendum Morale, quia ſecundum ſuam determinationem* (that is, *ſecundum quotam partem*) *non eſt ſcriptum in corde hominis; nec Cæremoniale, quia non eſt datum principaliter in figuram ſignificationis, ſed Judiciale quia datum ſimpliciter in rationem æquitatis mutuæ diſtributionis, ut ſit æqualitas dati & accepti inter ſeminantem ſpiritualia & dantem temporalia, ſecundum quod poſſibile eſt, &c.*

[e] *Ad 3. Sent. diſt. 37. quæſt. 36.*

[f] *Part. 3. q. 51. memb. 3.*

&c. And [g] *Aquinas*; *Determinatio Decimæ partis ſolvendæ eſt autoritate Eccleſiæ*; and adds, that the ground of it, which he calls *radix*, is the text, [h] *If wee ſow unto you ſpiritual things, is it a great thing, if wee reap your carnal things?* The ſame is by *Hen. de Gandano*[i] expreſt in theſe words, *Adveniente Lege Evangelicâ & ceſſantibus Ceremoniis, ceſſavit & ſolutio Decimæ, pro quota illa: ſed manſit pro illo quod in illa erat jure Legis Naturæ, & ad illud reduxit Lex Evangelica.* And delivers accordingly the right of them to be *partim de jure Naturæ & Evangelii*, that is, *quatenus vacantibus Divino Miniſterio communiter ab omnibus debet provideri*; and, *partim de jure humano Eccleſiaſtico*, or *Poſitivo*, that is, *quoad quotam partem.* And to the ſame purpoſe, the reſt. But, whereas ſome make that learned *Hales the firſt* Author of this Doctrine; doubtleſs they err. For however *Lex Divina*, *Deus Præcipit*, and the like, frequently denote the right of Tithes in the former CCCC. years; yet firſt conſider, what is there admoniſhed touching the practice of the time, and from thence you may, perhaps, interpret their meanings to be otherwiſe, then as they are commonly (and eſpecially by the Canoniſts) taken. Could the Church have, before his time, held cleerly that the Tenth was due by the Moral Law, and yet, againſt their own conſciences, generally, give way to, and practice alſo, thoſe Conveyances, which

[g] 2.2 q 87. art. 1.

[h] Epiſt. 1. ad Corinth. cap. 9. 11.

[i] Quodlibet. 4. q. 28.

which can have no power over that which the Moral Law, ever binding uniformly, hath ordained? And indeed ſome great Doctors teach, That the *Jus Divinum*, denoted in thoſe paſſages of the body of the Canons, was no otherwiſe underſtood, then only that we are bound to it by the Law Poſitive of the Church, imitating the Divine Iudicials (which retain ſtil, as Cardinal *Cajetan* teaches, their *vim exemplarem*, though not *obligativam*) and is well enough thence ſtiled *Jus Divinum*. *Cum ergo dicitur* (ſayes the Cardinal [k]) *Lege divina, aut Deo jubente ad Decimas tenemur*; *intellige exemplariter*. Neither doth he otherwiſe interpret other paſſages of the Fathers, which are to that purpoſe. *Neque aliud*, are his words, *ſancti patres intellexerunt*. And remember alſo, that thoſe Fathers affirm it not in diſputation but only in exhortation to the people; which is ſpecially obſervable to any that knows the courſe of their writing. With *Cajetan* alſo (in that the Law for Tithes is not Moral) *Bellarmin*, *Suarez*, *Malder* Biſhop of *Antuerp*, and late Profeſſor at *Lovain*, and others accord, and make it the *communis opinio Theologorum*; and ſome will have it Ceremonial, rather then Iudicial. But wee diſpute not thereof. But alſo an example is brought out of S. *Ambroſe* his uſe of [l] *Quadrageſima divinitus conſtituta*, denoting the Eccleſiaſtque commandement of Lent, that was but in a kind of

[k] *Ad* 2. 2. *q.* 87. *art.* 1.

[l] Videſis *I. Major. ad.* 4. *ſent. diſt.* 15. *queſt.* 3.

of imitation of our Saviour's abſtinence. Which ſhews, that what is from the holy Word exemplary taken, is denoted ſometimes with ſuch attributes as might ſignifie a Moral Conſtitution. And the truth is alſo, that *Jus Divinum* is very often, and was, about the time of the body of the Canon Law publiſhed, taken for *Jus Eccleſiaſticum*, or *Jus Civile quod ad Eccleſiæ adminiſtrationem ſpectat.* As you may plainly ſee in an Epiſtle of *Alexander* the Third, that liv'd till M. C. LXXX. where he directs, that a Church having been in poſſeſſion XL. years of Tithes growing in another Pariſh, ſhould have them ſtill by that preſcription, becauſe in ſuch caſe, *de jure divino & humano melior eſt conditio poſſidentis.* Who ſees not, that he there uſes *Jus Divinum* for Poſitive & human Law of the Church? What hath the Preſcription of LX. years, or primer poſſeſſion to do with the direction of Divine Moral Law? Or indeed, if he had meant, that Tithes, *quoad quotam*, had been due for the Miniſters Salary by the Divine Moral Law, how could preſcription have had place againſt it? Part of that Epiſtle is [m] in the body of the Canon Law. But becauſe it is fuller, and indeed more authentique, in a very [n] ancient Copie of Decretal Epiſtles (the moſt of them being of *Alexander* the Third) it ſhall thence be hither faithfully tranſcribed. *Alexander Mauricio Epiſcopo. Ad aures noſtras, te ſignificante, pervenit, duas Eccleſias*

[m] *Extr. de Præſcript. c. 6. ad aures.*

[n] *In Ms. lib. 5. in Bibliotheca Cottoniana.*

cleſias ſæpius ſub examine tuo litigare ſuper Decimis quas una Eccleſiarum in alterius Parochia XL. annis poſſedit, ac per hoc o *petit ejus actionem extentam. Altera vero volens eas jure Parochiali evincere, præſcriptionem non debere ſibi obeſſe proponit. Ideo quid juris ſit in hoc caſu, tua nos duxit fraternitas conſulendos. Tuæ itaque fraternitati literis præſentibus innoteſcat, quod jure divino & humano melior eſt conditio poſſidentis, quoniam quadragenalis præſcriptio omnem prorſus actionem ſecludit.* And, that *Jus divinum* was in that ſence taken in theſe Ages, appears alſo by *Hales*; where, although P he before held cleerly, that the commandement of the *quota pars* was judicial, yet he ſayes, That *Decima ſicut Domini generalis cenſus* is payable *jure divino*, That is plainly (in his meaning) by the Eccleſiaſtique Conſtitution of the Church, imitating the Divine Judicials. Neither was the Phraſe otherwiſe uſed in that of the General Council of *Lateran*, held before the time of *Hales*, in the year M. CC. XV. *Illæ quippe Decimæ neceſſariò ſunt ſolvendæ, quæ debentur ex lege divina vel loci conſuetudine approbatâ.* I know the Canoniſts miſerably wreſt themſelves about the interpretation of that place. But, when they have done all in miſtaking it, could the Council think, that *loci conſuetudine*, ſome were due, yet that all *lege divina*; taking it for the Moral Law. For, if any, then all, by the Moral Law: Clearly then the Engliſh

o *I. putat ejus actionem extinctam.*

p *Part. 3. q. 51. membr. 5.*

Engliſh [q] of that was, *Thoſe are neceſſarily to be paid, which are due either by the Poſitive Law of the Church* (which extends not always univerſally) *or Cuſtom of the Place.* Some refer that *ex conſuetudine* to perſonal Tithes, ſuppoſing [r] them due only by Cuſtom or Poſitive Law. And that alſo might be a tolerable interpretation, if at the time of the Council ſuch a diſtinction had been receiv'd twixt perſonal and predial. But can it then ſtand for truth, that *Hales* was the firſt that broacht this opinion of the *quota*, being due by human determination in the Church, and not by the Divine Moral Law? Indeed he was the firſt that accurately diſputed the queſtion as a Schoolman, and expreſsly made the diſtinction, but clearly not the firſt that ſo held the point. To the former Teſtimonies hereof, add that of *Hugo de S. Victore*, who liv'd near C. years before *Hales*. He ſpeaking of payment of Tithes before the Law, under the Law, and ſince, concludes with, *Primùm igitur ante legem, parvulos Conſilio nutrivit (Deus) poſteà ſub lege exercitatos præcepto tentavit. Noviſſimè ſub gratia perfectos in libertate ſpiritus ambulare permiſit.* By this firſt Opinion of the Schoolmen, to which the ancient Fathers are (you ſee) by ſome of them ſquared, no difference is to be made of Predial, Mixt, and perſonal Tithes, however ſome ſcruples about that difference, have been needleſsly

[q] *Bellarm.* etiam optimè interpretatur, *lib.* 1. *de Cler. cap.* 26.

[r] Vide *Henric. Bowbic in tit. de dec. c. pervenit.*

[s] *Erudit. Theol. lib.* 1. *part.* 11. *cap.* 4.

handled by them. For *quoad ſubſtantiam Deci-mæ*, or *Decimam ſuſtentationis*, as they call it, or, as the labourer is worthie of his hire, both are equally due. The Moral Law, according to them, deſigns not out real poſſeſſions to be more ſubject here to the natural part of commutative juſtice, then perſonal profit. And therefore alſo *Alexander Hales* aptly determines, that *Decimæ tam perſonales quam prædiales ſunt in præcepto*, that is, both *quoad ſubſtantiam*, but neither *quoad quotam*. And that in *Venice*, and other ſuch Cities, where no Predial Tithes are, a Perſonal Tenth is due by the Poſitive Laws of the Church, as, in them alſo, a ſufficient maintenance is to be had for the Clergy, by the Moral or Natural Law. In ſumme, by this Opinion, Cuſtoms of payment of leſs, of nothing, and other Civil Titles, that have force againſt Eccleſiaſtique Law poſitive, are allow'd, ſo long as the maintenance of the Miniſter be otherwiſe competent. Both failing, then is that defect to be ſupplied (notwithſtanding any Civil exception) due by the Divine, Natural, or Moral Law; which, inſcrib'd in all hearts, admoniſhes, that reward is due to every laborer; much more to him of the Spiritual Harveſt. Other Queſtions about Tithes are diſputed in the Schoolmen. But it is not hard to conjecture, how the moſt are to be determined (according to them) by their reſolution of this alone; therefore I omit them.

You

You ſee how oppoſite this Opinion is to that receiv'd among the Canoniſts, twixt whom and the Schoolmen [t] was uſually great diſſention. It is not to be doubted, but that the Schoolmen lookt much further into all that they medled with, then the Canoniſts could do. And had the Canoniſts agreed herein with them, they might with fewer abſurdities, have maintained divers of their ſcrupulous Poſitions. And ſome of [u] them were ſo moved at the Schoolmens Diſputations, about *Hales* his time eſpecially, that they knew not which way at all to determin it. This difference of the Canoniſts and Schoolmen is remembred by *I. Major. Theologos hic* (ſaith [x] he) *Canoniſtæ hæreticos vocant, quia dicunt Decimas non eſſe de jure divino.* But which are here the more competent Judges of the two, he tells you further, in his Anſwers to *Peter* of *Ravenna*, a Canoniſt of his time. He lived about C. years ſince.

[t] *Ockam. lib. 1. dialog. 3.*

[u] *Raynutius apud Hoſtienſem in ſumm. tit. de decimis num. 10.*

[x] *Ad Sent. 3. n. diſt. 37. q. 36.*

IV. The ſecond Opinion in Divinitie, is of thoſe, that (having their firſt ground out of the determination of the Schoolmen) held Tithes to be *meer Almes*, and not to be paid to the Miniſters of the Goſpel by any Parochial right, as a neceſſarie dutie to the Evangelical Prieſthood, but that they might be retained and diſpoſed of at the Owners Will; eſpecially if the Paſtor [y] well performed not his function. Of this, were both ſome of religious Orders in

[y] *See Wicleve's complaint to the K. and Parliament artic. 3.*

their preaching, and alſo others oppoſit enough to them in Doctrine. The *Dominicans* and *Franciſcans* eſpecially (who began both about the year M. CC. X. and had in their Monaſteries ſtore enough of Schoolmen) made it a gainful Doctrine to teach Lay men, that they were not bound to pay their Tithes to their Miniſters, as to whom by any Law of God, that portion neceſſarily belonged. For when the determinations had preceded, by which the *quota* was concluded, not to be due *Iure divino*, they of this ſide neglecting (for the moſt part) the poſitive and human Laws made for them, and regarding only the expreſſe Law of God, taught them due only as Almes, or as what *debito charitatis*, non *debito juſtitiæ*, was to be diſpenſed. By this Doctrine the *Mendicants* eſpecially often got them to themſelves (like the old * *Euſtathians*) as Alms to be arbitrarily diſpoſed of to ſuch as took any ſpiritual labour: as alſo made their own detaining of them in Lands, out of which they were Parochially due, to ſeem the leſſe wrongfull. But againſt their detaining of Parochial Tithes a Canon was made in the General [z] Council of *Vienna*, held in M. CCC. XL. and their Doctrine was taxed by Pope *Innocent* the Fourth about M. CC. L. writing [a] upon the Decretals, where he calls them *iſti novi Magiſtri, & Prædicatores qui docent, & prædicant contra novum & vetus Teſtamentum*. And *Richard* Arch-

* Vide *Zonar. in Concil. Gangr. Can. 7.*

z *Clementin. tit. de Decim. c. 1. Religioſi.*

a *Addit. tit. de Parochi. c. ult. ſignificavit.*

Archbiſhop of [b] *Armagh*, complains againſt them for poſſeſſing the people with an Opinion that the command of Tithes was not Moral, but only Ceremonial, and not to performed, by conſtraint of Conſcience, to the Miniſter; and that out of whatſoever at leaſt was given to any of the four Orders of Mendicants, no Tithe was in Conſcience to be deduced for the Miniſters. With theſe in ſubſtance did others alſo at the ſame time agree, that otherwiſe were oppoſite to the whole Nation of Friars. As with us *John Wiclefe*, *Walter Brute*, *William Thorp*, and ſome ſuch more, whoſe Arguments for their Opinions are at large in *Foxes* Acts and Moniments of the Church of *England*, whither I had rather ſend the Reader then ſtuff this place with them. *Wiclefe*'s [c] Poſition (for [d] which as for an Hereſie ſome have been ſince queſtion'd with us) is before related, as it was condemned in the Council of *Conſtance*. And *Thomas Walden*, the Provincial Governour of the *Carmelites* in *England*, about the end of the time of *Henry* the Fourth, wrote againſt him in it, vindicating the duty to the Church, but not ſo much, *ſecundum quotam*, *ſed magis ſecundum ſubſtantiam*, as his [e] own words are. Hereto may be added one of the Articles of the *Bohemians*, publiſhed about CC. years ſince, wherein a Divine right to Tithes ſince the [f] Goſpel is denied. Whereupon alſo they long ſince took all temporalities from their

[b] *In defenſor. Curatorum &c vide, ſi placet Alex. lib 4. conſil. 60.*

[c] Et videſis *in Faſcicul. rer. expetendarum, pag. 113. in Wicleui Theſibus.*

[d] 10. Hen. 7. fol. 17.

[e] *Doctrinal fidei tom. 1. lib. 2. Artic. 3. Cap. 64. & 65.*

[f] *Fox in Hen. 5. pag. 602.*

their Miniſters, and brought them g to ſtipends. Others have been poſſeſt with this conceit, and among them you may remember *Gerardus* h *Sagarellus*, before *Wiclefe*, burnt alſo for an Heretique. And the great *Eraſmus* gave the common exacting of Tithes by the Clergy of his time, no better name then Tyranny. But that of his, divers have ſufficiently both reprehended and confuted, and eſpecially *Albertus Pius Carpenſis*, in his labour againſt him. With this may be reckon'd that of *William Ruſſell* a *Franciſcan*, who under *Henry* the Fifth had publicly preacht, That the payment of perſonal Tithes to the Paſtor, were not in God's Commandement; but that it was lawfull for every Chriſtian to diſpoſe of them arbitrarily to charitable uſes. But of him ſee more in the next and third Opinion, where the words of his Doctrine are expreſt in a Letter from the Univerſitie of *Oxford*, to the Convocation of the Clergy,

g *Joh. Major. in Sent. 3. Diſt. 37. q. 36.*

h *Paul Gryſaldus apud Camil. Borel. in Conſiliorum part. 1. conſil. 45. edit. à I. Baptiſt. Caſaro.*

V. The third Opinion is of thoſe who agree with the *Canoniſts*, that the right, of the *quota* of Tithes, immediatly is from the *Moral* or *Divine Natural Law*; ſome impudently urging with a commandement given to *Adam*; others of them providently reſtraining all there arguments to ſuch grounds for the Concluſion, as may be had out of *Abraham*'s example, refer'd to the application of it in the Epiſtle to the *Hebrews*; but others alſo not ſo circumſpectly, taking

king in the *Levitical* commandments of Tithes for their moſt ſufficient Authority. For the firſt kind that talk of *Adam*; I think indeed that in the time of this Light of Learning, none have durſt venture their credits upon ſuch fancies: yet, that it was ſome opinion that had at leaſt in pretence many Authors in the Church of *England*, in the blinder time of our Anceſtors; I thence collect, for that in a *Penitential* made for direction of Prieſts in Auricular Confeſſion, and written (as my Copy is) about *Henry* the Sixth, the Prieſts examination and adviſe upon the Point of Tithing, is thus expreſſed, *Haſt thou truly doo thy Tithings and Offrings to God and to holichirch? thou ſhalt vnderſtand that at the beginning of the worlde, whan ther was but oo man, that is to ſay,* Adam, *God chargyd him that he ſhould truly of al maner thyng give God the* X^th. *parte, and bad hym that he ſholde teche his children to doo the ſame maner, and ſo forthe al men into the worldis ende. And foraſmuch as ther was that tyme no man to receiue it of hem in the name of holichirche, and God wolde not that thei ſholde haue but* IX *parties. Therefor he commandid hem that of euery thyng, the Tithe parte ſhould be brent. I fynd that afterward* Adam *had two Sonnes* Caime *and* Abell, Abell *tithed truly and of the beſt.* Caym *tythed falſely and of the werſt: at laſt the fals Tyther* Cayme *ſlough* Abell *his Brother; for he blamyd hym and ſayd that h- ty-*

thed euel, wherefore our Lord God accursid Caym *and al the erth in his werk. So ye mow se that fals tything was the cause of the first manslaughter that euer was; and it was cause that God cursid the erthe*, it is literally transcribed as I find it; that writing of *Cayme* for *Cain* is ordinary in the Monuments of that Age, as you may find in *Wickleves* Works, *Waldensis* his Doctrinal, and others of like nature. But see here the effect of perverse opposition on both sides. Some Friers, providing only for their own Wealth, would have had them reckoned meer Almes, and so have gotten them from the Secular Priests; and others would have had them retained by Lay-men. The Secular Priests on the other side would rather instruct the Laity with ridiculous falshoods (in the terms whereof they would not spare to abuse the holiest Name) then not seem to say enough for their own gain. In those times they did so, they saw the Friers dangerous Doctrine to their Revenues, and therefore omitted no Argument, no course in opposing it; a notable testimony whereof is had also in that of Frier [i] *William Russell* a *Franciscan*, that in the Convocation of 5 *Hen. 6.* was vehemently accused because he had preached, that Personal Tithes were not necessarily payable by God's Commandement, but that every man might dispose them at his pleasure in Charitable Uses; the sum of which was, that every man might or should rather

i Ex *Archivis Arch Cant. hausit v. C.* Arth. Duck *LL. D. in vita Th. Chichelei Cant Archiepisc. pag. 73.*

ther give them to the begging Friers; a Doctrine of no ſmall prejudice to the Secular Prieſts, if once publickly received. This *Ruſſel* was by the Convocation enjoyned to recant at *Paul*'s Croſs on a prefixt day, before which he fled the Kingdom; and after publick citations againſt him, was ſolemnly pronounced an Heretick for it; his opinion alſo being condemned by both the Univerſities; the Letters then ſent to the Convocation, from *Oxford*, both ſhew the determination of that Univerſity on the Point, and the particular Tenet alſo of *Ruſſel*; therefore we inſert them; the direction is to the Clergy of *Canterbury* Province from the *Univerſitas ſtudii Generalis Oxoniæ*, after which follows a Preface in general terms againſt ſuch as forſook the ancient ways, and fell into new Hereſies; then they go on with *ſed quia in multis novitas* (ſo are the words of it, as I have it faithfully tranſcribed [k] to me through the curteſie of my moſt honoured Friend Mr. *Thomas Allen* of *Gloceſter Hall*; whoſe name it were not without offence in me, at all to mention without ſpecial reverence, as well to his ſingular humanity as to his fulneſs of Learning and Worth in good Arts) *Sed quia in multis novitas parit pericula, in quibus antiquitas non peccabit, illud eſſe cenſemus inconcuſſe tenendum quod ab antiquis patribus conſtat clariſſimè præfinitum. Verùm quia nuper nobis innotuit cujuſdam novelli* (that is of *Ruſſel*) *inſana*

[k] Ex *Archivis Oxon. in Bibliotheca Bodleiana.*

doctrina contra Decimas personales (cujus miramur audaciam & dolemus insipientiam) sed ejus pertinaciam & Ecclesiæ contemptum sustinere veremur, & ne nostra [1] *taciturnitate seu negligentia tacito consensui adscribatur, in ipsa materia scribere curavimus quod concordes sentimus, & in evidens testimonium nostro sigillo communire decrevimus, ad veritatis dilucidationem & obsequium Ecclesiæ, ut tenemur*; then they deliver their determination thus *Dicimus & firmiter concipimus quòd Decimæ personales tam ex præcepto juxis divini quam sanctorum Patrum traditionibus sub autoritate Ecclesiæ in concordi juris judicio debentur Ecclesiis & earum Ministris Curam animarum habentibus & Sacramenta ministrantibus ex autoritate Ecclesiæ. Magna namq; est sacro-Sanctæ Ecclesiæ autoritas extra quam fides plane perpendit nullam posse pervenire salutem fidelibus. Ne illis ergo resideat spiritus pestilens aut opinio corrumpens ubi locus quæritur fidei Orthodoxæ, verba per adversarium premissæ nostræ sententiæ prædicata, quæ etiam sub Avaritiæ subtili fuco deprehendimus palliata, reprobamus & tanquam erronea & hæretica declaramus. Quorum demens tenor cum reprobo sensu sic sequitur, Catholica damnatione fulminandus. Decimæ personales* (this was the Doctrine of Frier *Russell*) *non cadunt sub præcepto divino, saltem ut solvantur Parochiali Curato; quare licet vestrum unicuique, nisi consuetudo in contrarium fuerit, in pios usus pauperum eas dispensare.*

[1] Taciturnitas.

ſpenſare. Et iterum. Perſonales Decimæ ſub divino non cadunt præcepto neque jure debentur, ubi ſolutionis non eſt conſuetudo. But they thus damn it. *Quiſcunque hanc ſententiam tenuerit, & pertinaciter defenderit apud reputationem noſtram Hæreticus eſt cenſendus, & quia à ſana doctrina Eccleſiæ eſt diviſus, à corpore ejuſdem Eccleſiæ, velut membrum putridum, eſt præſcindendus. O honorabiles fratres & Domini, O univerſitates Catholicæ, & quicunque fideles ſcrutamini Scripturas, Canones inſpicite ac eorum naturales concipite rationes; quam proditorium eſt tributum negare altiſſimo? quam inhumanum à laborantibus abſtrahere debitum? quam grave ſchiſmatis exemplum autoritati Eccleſiæ publice & pertinaciter reſiſtere? ac etiam juſtitiæ obviam contra præcepta Canonum res alienas invadere: nimis cruenta ac ſacrilegia eſt hæc avaritia quæ antiquiſſimi juris Decimale debitum ſolum Conſuetudini adſcribit, & in dubium revocat ut laborantium victum juſte exhauriat; quod Miniſtris Eccleſiæ ad eorum honeſtam ſuſtentationem firmum perſiſteret, ſi Decimæ poſſunt ad libitum conferri, & jus Decimandæ ex Debito non eſſet? O utinam aut reſipiſcant & ad Eccleſiæ gremium redeant, qui tanto facinori favere conantur; aut aſperrimis cenſuris, ne ſimplices inficiant, mordaciter feriantur. Sic unanimes in vera doctrina Eccleſiæ permaneamus ut ad eum tendere valeamus, de quo canit Propheta. Quærite Dominum & confirmamini, quærite faciem ejus ſemper; ſic lætetur*

cor-

cor quærentium Dominum hic in via, quatenus ipſum quærentibus dignetur eſſe merces in patria, Amen. They were, methinks, ſomewhat vehement and very confident in the Point. Neither have I elſewhere ſeen ſo great Authority againſt *Ruſſel.* If *Ruſſel* were therefore an Heretick, doubtleſs he hath had, and now hath many fellow-Hereticks; for thus, many, nay the moſt of ſuch as moſt curiouſly inquire herein, and divers Canoniſts alſo that are for the moral right of predial and mixt Tithes, deny that perſonal are otherwiſe due regularly than as cuſtom, or Law poſitive (which is ſubject to Cuſtom) directs. But judge you of it, Reader. I only relate it, and return to their proſecution againſt *Ruſſel*; at length News came that he was at *Rome*, whither preſently the Convocation ſent Agents (to whom they allowed for an honorary ſalary, a farthing out of every pound of Church Livings) that might there queſtion him before the Biſhop of *Rome*; a Delegation of the Coniſance of the cauſe was made to a Cardinal, who adjudged him to a perpetual impriſonment, unleſs he recanted. The Frier afterward brake priſon, and ran home again, where at *Paul*'s Croſs (when nothing elſe could ſatisfie the ſecular part of the Clergy) he ſolemnly abjured his Hereſie, as they call'd it; and to prevent the like in the Doctrine of other Minorits, *Chicheley* the Archbiſhop enjoyn'd them all, that in their Publick Sermons they

they ſhould teach perſonal Tithes to be due by the Laws of God and the Church. Of later time others have written for the Divine Right and general Duty of Tithes; you may ſee *Albertus Pius Carpenſis* againſt *Eraſmus*, *Baronius* [m] his digreſſion touching them, others, but eſpecially the divers Treatiſes written to that purpoſe of late by our Country-men, which are read in every hand. I purpoſely abſtain from particular mention of their names. But neither have only ſingle Authors been lately of that ſide for predial and mixt: whole Synods alſo of this Age have in expreſs words been for them, through whoſe authority and this ancienter before remember'd they might have fortified their Concluſions with far greater names, then by citing ſome one or two late ſingle men, as they uſually do. To omit the Council of *Mentz*, held in the year M. D. XLIX. where it is delivered that *Decimæ debentur jure Divino* (and ſome other are to that purpoſe in the *Decreta Eccleſiæ Gallicanæ*, collected by *Bochel*) In [n] an Edict of *Henry* the Second of *France* in M. D. XLII. relation is of a Remonſtrance made to him by the Biſhop, Dean, Canons, Chapter and Clergy of *Paris*, wherein they take it clear, that Tithes and Firſt-Fruits were *introduitees & inſtituees de droit diuin & partant deuſſent eſtre payes Loyauement & ſans fraude*. The like, of the Clergy of the Dioceſe of *Troyes*, is mentioned in

m *Ad annum Chriſti* 75.

n *Edicts & Ordonnances de France tom.* 4. *tit.* 22.

in an Edict of *Charles* the Ninth, in M. D. LXII. in the same words; and in the year before by a General Synod of all the Clergy of *France* at *Poissy*, a complaint was made with that pretence in it; the words of the Edict best shew it, *Charles &c. à tous ceux qui ces presentes lettres Verront, salut. De la part de nos chers & bien amies consiellers les Archevesques & Evesques de nostre Royaume & des deputez des Clergez, qui ont este n'aguerez assembleza Paissy par nostre commandement, nous à este remonstre, que combien que les Diximes & Primices, qui sunt leur principall revenu, soient introduitees & instituees de draict divin, & partant deussent estre payees layaument & sans fraude: ce neant moins plusieurs Agricoles, proprietarees, &c.* with these may be reckon'd, that of the Clergies Petition in the [b] Parliament of 50 *Edw.* 3. wherein they begin with *Licet Decima silvæ, presertim cæduæ, de jure divino & ecclesiastico & Deo ecclesiæ sit solvenda, &c.*

b *Rot Parl.* 50 *Ed.* 3. *art.* 199.

VI. But Although by *this Opinion*, and that of the *Canonists*, Tithes be generally due by the divine Law, and so not subject (if with them you take it for the divine, moral, or natural Law) to *Civil Exceptions*, as *Customs* and *Prescriptions*, of Discharges, or of payment of less, or such more, whence also real compositions have been condemned [c] *quia Decimæ cum temporalibus non sunt commutandæ*, as the words of an old Pope were to the Bishop of *Cusa*; yet the practised Com-

c *Append. ad Concil. Latran, part.* 4 *cap.* 1.

Common Law (for by that name, as *Common* is diſtinguiſhed from *Sacred*, are the Civil or Municipal Laws of all Nations to be ſtiled) hath never given way herein to the Canons; but hath allow'd Cuſtoms, and made them ſubject to all Civil Titles, Infeodations, Diſcharges, Compoſitions, and the like. Of *Compoſitions* no more ſhall be ſpoken, ſeeing thoy conſiſt rather in Individuals, than of any general courſe; we only remember them here as one kind of Diſcharge, among other that have been allow'd by Common Laws; and where Cuſtoms, and Infeodations hold, no man can doubt of the lawfulneſs of Compoſitions. But of *Cuſtoms*, in the Edicts made by thoſe Kings of *France* upon thoſe Remonſtrances it appears, that, what ever the Clergy ſuppoſed by their *Dixmes introduitees*, and *inſtituees de droict divin:* they complain of abuſe only in due payment of Tithes out of Lands, *ſuites & redeuables aux dies dixmes &c.* that is, ſubject and liable to the payment of Tithes; neither in other words do the Edicts and their verifications give them remedy. And notwithſtanding that it were once (according to ſundry Canons of that Church) thus commanded by an old Law of the year [d] M. CC. XXXVIII. made by S. *Lewes*, *Decimæ quibus fuit longo tempore Eccleſia per malitiam inhabitantium defraudata, Statuimus & ordinamus quod reſtituantur citius, & amplius Laici decimas non detineant ſed eas habere*

[d] *Edict. & Ordinances tom. 4. pag. 493.*

bere clericis permittant; yet, in that ſtate, againſt the whole courſe of the Canon Law in this kind, they have, what by reaſon of ancient Infeodations ſtill continuing, what through cuſtoms, allowed divers Lands to be not at all ſubject to any Tithes payable to the Church. For their *Infeodations* (although none can be there new created) ſuch as were made before that Canon *prohibemus* of the Council of *Lateran*, held under *Alexander* the Third, are to[e] this day remaining, and are conveyed and deſcend as other Lay Inheritances; excepting only ſuch, as being diſcharged of feudal ſervice, have been given in to the Church. For, their Lawyers with the common opinion (but erroneouſly) ſuppoſe that all ſuch Infeodations came from the Church; and therefore they agree if any feudal Tithes be conveyed into the Church[f] freely by themſelves (not as annexed to other Fiefs, as Caſtles, or Mannors, nor ſubject to Tenures reſerved) that then they are in the Church, as it were *jure poſtliminii*, or as we ſay, by way of remitter; that is, they are ſo annext, that they may not be transfer'd again into Lay-hands, more than any other Tithes which are the ancient Revenue of the Church. whence it hath been adjudged alſo in the Parliament of *Paris* in the caſe of the Biſhop of *Bajeux*, that Tithes ſo conveyed are not[g] ſubject to the cuſtom of *droict de Retraict lignagier*, that is, the Right of the Heir Apparents redeeming an Inheritance

e Videſis *Guidonem PP. Deciſ.* 288. & *Conſuet Bituricenſ. tit.* 10. *de cuſtumis prediales.* §. 11.

f Vide *Carol. Molin. in Conſuet. Pariſ.* des Fiefs §. 68. *pag.* 1276. & *ſeqq.* & *Bertrand. d'Argentre in Conſuet. Britan. artis* 266. *pag.* 1114.

g *J. Lucius Pariſ. Placit. Curia lib.* 2 *tit.* 5. §. 2.

Inheritance ſold by his Anceſtor within a year and a day, or ſome ſuch certain time. But this Point of Remitter, they ground not ſo much upon the nature of the Tithe, as upon an old Law of S. *Lewes*, wherein liberty is given that all perſons *Decimas percipientes in noſtra terra, & in feudis moventibus mediate vel immediate de nobis quas Clerici perciperent, ſi eas Laici non perciperent, poſſint eas relinquere, dare & aliis quocunq; juſto titulo, & licito modo Eccleſiis concedere tenendas in perpetuum, noſtro vel noſtrorum ſucceſſorum aſſenſu minimè requiſito, &c.* whereas (by the way) ſome of their Lawyers [h] ſay, that feudal Tithes there purchaſed by Clergy men, are at this day ſubject to the *droict de nouveaux acqueſts*, *i.e.* a kind of Fines for Alienation, which I could not yet learn how it well ſtands with this of S. *Lewes*. But they commonly interpret it as an ordinance to this end, that when the Church (the Pariſh [i] Church only to which they are ſuppoſed to have been due) had gotten them free by ſale or gift, or otherwiſe, they ſhould be perpetually annext to it; and were it not for this ordinance, which interpretation hath thus applied, their Lawyers ought to have enquired more carefully about the original of every Infeodation: for, where it began from a Lay-man, there, what cauſe is of remitter? And theſe kind of Feudal Tithes alſo of their own nature are meer Lay Poſſeſſions and determinable in that Kingdom, only before the

h *Bacquet des droicts de Domaine tract. 4. part. 3. cap. 30.*

i Voyez *Paſquier en les Recherches lib. 3. cap. 35.*

ſecular Judge, as it appears, not only in an old Ordinance of *Philip le Beau*, touching the Juriſdiction of Tithes, and in the Protocolle or Regiſter of the Chancery of *France*, but alſo in a late Arreſt of the Parliament of *Paris*, where a Curate ſued before an Official for his *Canonica portio* (which hath been there ſometime adjudged the fourth part; but is arbitrarily determined) againſt ſome other Church-man that enjoyed the Tithes of the Pariſh, who pleaded to the Juriſdiction, that the Tithes were feudal, and deſired that he would not hold Plea of what ſo much belonged to the King's Court; but the Official firſt gave ſentence that the Defendant ſhould bring in his proofs of the Tithes being feudal; which failing, he proceeded to the Point of the Action; thereupon by *appel comme d'abus*, it came into the Parliament of *Paris*, which after ſolemn Argument gave [z] Judgment that the Official had uſurped over the Royal Juriſdiction, in that he had at all proceeded after the ſimple Allegation of Infeodation, which alone binds the hands of the Eccleſiaſtical Judge, that hath no more power to enquire of the Infeodation, or of Tithes as feudal, than of any other Lay-Inheritanee; and in the ſame caſe, reference is made to ſome other Judgments of like nature; and the reaſon given in the Arreſt is mainly, becauſe Tithes of their own nature, and originally are not otherwiſe ſpiritual,

y *Code des Dec. lib.* 1. *tit.* 10. *deciſ.* 15.

z *Co bin en les loix de la France Arreſt* 66. *Et Code des deciſ lin.* 1. *tit.* 10 *Deciſ* 17 & voyez *Papon en Notare vol.* 2. *lin.* 8. *fol.* 551.

ritual, or belonging to a Spiritual Court, than only as they were annext to a Church, or ſome other hallowed place. *La raiſon eſt*, are the words, *que ſuyvant le Doctrine de S. Thomas, nous Tenons qu'en la loy de grace, les Dixmes ſont deues non de droict diuin, mais poſitif; & l'eſgliſe en naiſſant n'a eſte faict Dame de ce droict, ains par le don & conceſſion des Rois, Princes, & autres a qui de droict il appertenoit*; whence, if they were annext to any Church, they were of Eccleſiaſtical Juriſdiction that was given anciently for them; but being as feudal Inheritance, although they once were in the Church, yet a new Character of being meer Lay is reſtored to them. Thoſe [a] Infeodations of Tithes are there very frequent, and in very many Pariſhes the Tithes are taken only by Lay-men. But for them, ſo much *Cuſtoms* in payment and non-payment of the Tenth, have ever held in that Church, which might alone be proved out of ſome paſſages in *Gerſon*, and in [b] *Johannes Major*, who tells us that *plurimi in Italia & Francia de multis rebus quotam non dant.* But it may more fully be manifeſted by Edicts of late time; in one of *Charles* the Ninth, and another of *Henry* the Third; *Dixmes ſe leuerant ſelon la Couſtume des lieux & la cotte accuſtumee in iceux. Et ou la dit Couſtume ſerra obſcure & incertaine, ſerra ſuiuie celle des lieux circumuoiſins.* The French Cuſtoms (according to divers uſages of their Provinces) are frequent

a *Bertrand d'Argentre in Conſ. Brit. art. 166. des Appropriances pag. 1111.*

b *Ad ſent. 3. dift. 37. queſt. 36.*

frequent for paying a leſs part than the Tenth, and clearly allowed [c] by divers Judgments. Neither is the Canon Law, which allows not Cuſtoms, ſuffered to be there practiſed. And for Cuſtoms of paying none or *de non decimando*; in ſome caſes they hold there alſo; and that by force of that *Lex famigerata* (as *Du*[d] *Molin* calls it) their *Philippine* which is an Ordinance made by *Philip le Beau* in M. CCC. IV. (but it is falſly and diverſly refer'd to other of their *Philips*) commanding that no new exaction ſhould be made of Tithes not accuſtomed to be paid. *Seneſchallus* (it ſaies) *ad requiſitionem conſulum locorum quorumcunque, defendat ipſos conſules & univerſitates & ſingulos à nova impoſitione ſervitutis facienda per Prælatos & alias perſonas Eccleſiaſticas, & à nova exactione decimarum & primitiarum & præſtationis paſſatæ, prout de jure fuerit & hactenus eſt conſuetum fieri.* By this Authority, whereas in the Pariſh [e] of *Branthel*, in the Dioceſs of *Meaux*, the Prior and Covent *de Noſtre Dame de Vaurart* purchaſed certain Land that had formerly paid Tithe Corn to the Rector, and made fiſh Ponds in it, the Rector afterward was bar'd in his Action for Tithe of the Fiſh; and one reaſon was upon this *Philippine*, becauſe no ſuch Tithe had been uſed to be paid: ſo in *Auvergne*, in *Berry*, and other Provinces, ſome Cuſtoms of [f] *non*-payment hold good. And oft-time the King there ſends commands grounded upon

c Videſis *Guidonem Papam Deciſ.* 284. *Code des deciſ.* l. 1. *tit.* 10. *deciſ.* 7.

d *Ad Edict. Henr.* 2. *contra data paru & abuſ. Curiæ Romanæ.*

e *Code des Deciſions.* 1. *tit.* 17. *Deciſ.* 9.

f Et teſtatur ex his Couvatuvias *lib.* 1 *Var. hujus cap.* 17.

upon this *Philippine*, that new Tithes not usually paid should not be exacted by the Clergy. *Litera* (saith my Author) *dictim conceduntur in Cancellaria Regia super novis decimis, ne à Laicis exigantur per eorum Prælatos, quæ fundantur in ordinatione Philippi Pulchri Francorum Regis facta die Veneris ante Cineres, anno* M. CCC. IV. *Cap.* XXIX. *hujus tenoris*, Item *quod Senescallus &c.* And expresly the Customs of [h] *Berry*. Item *par la Custome, disme est doibt paier seulement des choses d'ont est accoustume payer Disme, &c.* where *Boerius* saies, he has seen it accordingly for other places often adjudged at *Paris*: and in an Edict of 10 *Hen.* 4. of *France* touching the payment of Tithes by those of the reformed Religion, the payment is commanded only, [i] *selon l'usage & coustume des lieux*; and accordingly diverse Arrests of Parliament also have been. And although sometimes Customs have been there disallow'd, especially *de non decimando*; yet that hath proceeded chiefly from the usurpation of the Canons, where the secular Law was wrongfully neglected; as you may see in the example of that of the Ecclesiastical Court at [k] *Rhosne*, wherein the Laity were compelled *ad reddendas Decimas de fæno & aliquibus aliis de quibus apud eos inconsuetum erat reddere decimas*, as *Major*'s words are, who concludes, that had the Judge been other than a Canonist, he would not so have adjudged it.

g *Carol. de Grassalio Regal. Franc. lib. 2. inre 7.*

h *Tit. 10. des Customes prediales, § 12.*

i *P. Matth. hist. tom. 1. lin. 2. pag. 225. in 8.*

k *In 3. Sent. dist. 37. quæst. 36.*

VII.

VII. In *Spain* also some infeodated Tithes from ancient time are in Lay-hands, which the [t] Clergy about M.CCC.LXXX. would have had into their Revenue, under *John* the First of *Castile* and *Lions*; but could not; and in an Ordinance of the same *John*, against all such as should usurp the [u] Right of Tithes, a Proviso is that it should not extend to such Tithes or Church Revenue, as the Crown or any subject had from ancient time enjoyed. And a third part of Tithes due to the King, is mentioned in their [x] Laws, as granted to him from the Pope, of which, at his pleasure new Infeodations are made. And *Petrus* [y] *de Lorca* remembers, that the Pope *Regibus Hispaniæ concessit tertiam partem Decimarum & aliis secularibus absq; consensu singularum Ecclesiarum*; among these you may reckon those Tithes in the Crown, which by grant from the Pope, King *Ferdinand* and Queen *Isabel* had in the Kingdom of *Granado*, in consideration of their endowment of Churches there; and of them and their Jurisdiction, whereto they are subject, thus [z] *Covaruvias* an excellent Lawyer of *Spain*. *Semel*, saies he, *ex literis regiis vidi Decimarum causam tractari inter Ecclesiasticos apud Granatense Prætorium, ex eo quod Reges Catholici Ferdinandus & Elisabeth Decimas hujus Regni Granatensis obtinuerint à Pontifice Maximo cum onere dotandi Ecclesias*; that is, the Judges held Plea of them by

t P. Matth. ad Guid. Pop. decis. 248. ex Chronico Joh. 1. P. Castella. & vide Petr. Bellugam in Spec. tit. de Decimis.

u Ordenanças Reales de Castella lib. 1. tit. 5 leg. 1. & 3.

x Recopilacion per Philip 2. lib. 1 tit 5. & Gregorio Lopez in Partide. 1. tit. 20, leg. 22.

y In 2. 2. D. Thom. disput. 40. memb. 1. num. 16.

z Practic. quæst. cap. 35.

by Commiſſion from the King, not by ſpiritual power, which otherwiſe regularly hath coniſance of Tithes; although another great Lawyer [a] of that Country deny that the Coniſance of ſuch Tithes lawfully belongs to any other Juriſdiction than Spiritual. Neither hath the Canon Law been ſo powerful there, as to make Tithes payable againſt Cuſtoms, for payment either of a leſs part, or none. And however in an Ordinance of the year M. CC. XCIV. *Alfonſo* [b] the Ninth, publiſhed his *mandamos y eſtableſcemos por ſiempre, que todos los hombres del nueſtro regno den ſus diezmos derechamente y cumplidamente a nueſtro Sennor Dios de Pan y de Vino y ganados y de todas las otras coſas que deuen dar de rechamente ſegun manda ſancta yglesia*, wherein he ſeems to eſtabliſh, that whole Tithes without any Diminution ſhould be always paid to the Church, of Corn, Wine and Cattle, and all other things (which Ordinance alſo is exemplified and confirmed by *John* the Second of *Caſtile*, and *Ferdinand* and *Iſabel*; and accordingly, *Alphonſo Diaz de Montaluo* his gloſs on it, makes it to be conſonant wholly to the Canon Law) and the whole courſe of their ancient body of the Law, in their *Partidas* be agreeable with it. yet the practice in that ſtate hath been and is, that if Suit be commenced in the Spiritual Court for new Tithes, formerly not accuſtomed to be wholly or not at all paid, and ſuch Cuſtom or Pre-

[a] *Gregorio Lopez ad Partida 3. tit. 4. leg. 17.*

[b] *Faro Real. a Eſpanne lib. 1. tit. 5. y in Pragmaticas y leyes recopilades por mandado de los &c. Ferdinando & Iſabel.*

ſcription be pleaded, and the Official or Ordinary allow it not, upon complaint to the King's Court, the Defendant ſhall (as in caſe of Prohibitions in *England*) have his remedy. This is declared by[c] their *Covarruvias*. *Erit*, ſaith he, *obſervandum, cauſam Decimarum quandoque in his regnis* (that is, *France* and *Spain*) *tractari apud regios Auditores; nempè cum Laici contendunt Decimas ab eis exigi; quæ legitimâ Temporis præſcriptione* (which is uſually thought ſhould be immemorial, and ſo is their[d] practice; although the moſt common time in other things be XL. years) *minimè debentur, & ſunt remiſſæ; denique conqueruntur contra morem & conſuetudinem Decimas ab eis exigi; nam etſi condemnentur à Judice Eccleſiaſtico nihilominus, ex quærela, cauſa, retinetur apud Regia Prætoria. Siquidem & literæ Regiæ paſſim dantur à ſupremo Senatu ad id ut Laici non cogantur Decimas illas ſolvere quæ ſolvi legitimâ temporis præſcriptione non conſueverunt.* And with him agrees *Alfonſo de Azevedo*, that writes upon their *Ordennanças Reales*. But theſe kind of their Prohibitions are grounded upon their Ordinances, forbidding *Decimas à Laicis exigi, quæ per conſuetudinem contrariam non conſueverunt ſolvi*, as *Covarruvias* ſaies; and to that purpoſe was an Edict[e] of their *Charles* the Firſt (Emperour the Fifth) at *Toledo* in M. D. XXV. and another like of his at *Madrid* about three years after, and before four years were

c Practic. quæſt. 35.

d Alfonſo de Azevedo in Reg. Conſtit. lib. 1. tit. 5. l. 5.

e Covarruv. Var. Reſolut. lib. 1. c. 17.

were thence paſt, at *Segovia*, and another at *Valladolid*. And upon theſe oftentimes (ſaies *Alfonſo de Azevedo*) Writs of Prohibition go out to the Eccleſiaſtical Judges, that proceed *ſuper novitate*, to forbid that *ſimiles non permittant novitates, & proceſſum cauſæ Regio ipſi ſenatui originaliter mittant.* Which agrees with the very words of the Ordinances[f], that ſpake of *Novedades* in exaction of Tithes againſt Cuſtom. And one ſpecial uſe is there, that the Kings give their [g] Perſonal Tithes to their own Chaplains attending on them.

VIII. Neither hath the Canon Law wrought otherwiſe in *Italy*, but that there alſo particular Cuſtoms, as well of *Non Decimando*, as in the *Modus*, are frequent. *Multis Italiæ locis* (ſaies *Cajetan*[h]) *contingit ex conſuetudine*, that nothing at all is paid. And ſo is the practice there, for the moſt [i] part, at this day. The Pariſh Prieſts being ſufficiently maintained by Manſe and Glebe, and the Revenues that are in ſome places paid, as according to a *Modus*. And of the *Italians* and others, where like Cuſtoms were, *Aquinas* thus; [k] *Haud laudabiliter miniſtri Eccleſiæ Decimas Eccleſiæ requirunt, ubi ſine ſcandalo requiri non poſſunt propter deſuetudinem vel propter aliquam aliam cauſam.* In *Venice*, ſaies [l] *Paruita, non in vita ſed in morte ſolvuntur Decimæ perſonales de omnibus mercantiis jocalibus & aliis mobilibus.* And in the whole Seigniory of

f *Recopilation de las leyes por mandado de Phil. 2. lib. 1. tit. 5. l. 6.*

g *Partida 1. tit. 20. leg. 11. & ibi Lopez.*

h *Ad 2. 2. q. 87. art. 1. ſic & Joh. Major ad 3. ſent. 37. diſt. 36. queſt.*

i Relation of the Religion uſed in the Weſt parts, §. 39.

k Vide ſi placet *Henric. Bombic ad extr. de dec. c. pervenit.* Et *Antonin. ſumm. part. 4. tit. 11. cap. de Decimis.*

l *Ad c. in aliquibus tit. de Decimis.*

of *Venice*, as my Author [m] delivers, no Pariſh Church hath through that name *Decimas ſeu jus Decimandi*, but only another Stipend or *Quarteſium* (as they call it) *de poſſeſſionibus ſeu terris conſiſtentibus intra confines eorum curæ*. Neither have *Infeodations* of Tithes into Lay-hands been leſs known in *Italy*, than elſewhere. For example, you may ſee the [n] caſe of the *Mutii*, a Noble Family of *Piacenza*, who had by immemorial preſcription and confirmation by Bulls, an ancient Infeudation of all Tithes growing in the Territory of *Verano*, within the Dioceſs of *Piacenza*.

By the [o] Ordinance of *Frederick* the Second, about M. CC. XX. in the Kingdoms of *Naples* and *Sicily*, a command is, That of all profits belonging to the Crown of thoſe Kingdoms, a whole Tenth ſhould be paid, and that every Subject ſhould truly pay all ſuch Tenths as had been uſed to be paid in the time of *William* King of *Sicily*. *Subjectis* (are the words) *noſtris indicimus, ut Decimas quas de feudis & bonis ſuis anteceſſores eorum prædicti Regis Guilielmi tempore præſtiterunt, venerabilibus locis, quibus Decimæ ipſæ debentur, cum integritate perſolvant.*

In *Germany*, the Canoniſts note a Cuſtom, that [p] *pro Decimis ſolvunt certas menſuras ſive Coloni aliquid recolligant, ſive non.* And this by their Law they allow, becauſe it ſtands indifferent, whether the Church loſe by it, or no; but alſo ſome Lay-men take Tithes of new improvements

m *Franciſc. menaldus in part. 1. Conſil. 46. num. 51. edit. 1. Baptiſtæ Cæſaris.*

n *Maria Anguſſola edit. dill. part. 1. Conſil. 49, 50. &c.*

o *Conſtit. Sicul. lib. 1. tit. 7.*

p *Gl. & Panormitan alii item ad c. in aliquibus tit. de Decimis.*

ments by Right of their Lordſhips. *Status Imperii ſæculares* (ſays a [q] Judge of the Imperial Chamber) *Decimas Novalium percipere jure Territorii poſſunt.* Which the Clergy complain'd againſt, in a Diet at *Norimberg*, but in vain. And of [r] thoſe Tithes, Infeodations are there made, at the pleaſure of the Owners, into Lay-hands. Which was ſo in practice there alſo anciently, as is witneſſed by an old [s] Canoniſt, that liv'd above CCC. LX. years ſince; where diſputing the queſtion, *Utrum Laicus poſſit ſine peccato Decimas percipere*, and bringing the ordinary Autorities for the Negative part, he tells us, both for *Germany* and other Countries, in theſe words, *In contrarium poteſt induci generalis conſuetudo in Hiſpania & Francia & Burgundia & Alemania in pleriſque locis.* And in the County of *Flanders* an Edict was [t] made by *Charles* the Fifth, dated at *Malines* in M. CCCCC. XX. which commanded, that no Clergy or Lay-man pretending right to Tithes, ſhould exact or ſue for other *Nouuelles Diſmes aultres qu'ilz & leur predeceſſeurs ont accuſtume prendre & avoir poſſe quarante ans & audeſſus*; but that they ſhould reſt content with what was due only, according to the former uſe of payment, ſaving in caſe of New Improvements, and ſuch like, as it was explained by another Edict ſome ten years after; both together are the ſame almoſt as our Statute of 2 *Ed.* 6. And in the General Council

[q] *Thomas Michael in lib. de Jurisd. Concluſ.* 49.

[r] *Zaſius de feud. p.* 4. *& Valtuinus de Feudis lib.* 1. *c.* 5. §. 13.

[s] *Hoſtienſ. in ſumm. tit. de Decimis*, 13.

[t] *Ordinancies in ul. Flandren Bouck.* 2. *Rubec.* 11.

cil of *Lateran* of M. CC. XV. a relation is of ſome Nations, who although Chriſtians, yet *ſecundum ſuos ritus Decimas de more non ſolvunt*; and, that other men leaſed their Land to them, becauſe in regard of no Tithe being paid by them, the greater Rent might be reſerved; againſt which, remedy is there provided. The words are, *In aliquibus regionibus quædam permixta ſunt gentes quæ ſecundum ſuos ritus Decimas de more non ſolvunt, quamvis cenſeantur nomine Chriſtiano, &c.* Whereupon *Innocent* the Fourth, that might well know the meaning of the Council, living ſo near it, notes that the Chriſtians, who by their own Cuſtoms did not pay, were *Greeks*, *Armenians*, and the like; and * *Antoninus* expreſly remembers the general non-payment of them in the Eaſtern Church, as a thing not to be cenſured to be againſt God's Law. Neither indeed have I met with any Canon Law of all that Church that ever commanded any thing touching Tithes.

* *Summa part. 4 tit. 11.*

Among the Laws of *Hungary*, we find, *Decimas*[a] *non ſolvunt Nobiles de propriis terris*, and *Decimas non ſolvunt Raſciani, Rutheni, Valachi*, and *Decimas non ſolvunt Judices propter laborem eorum circa decimandum*; although for other perſons generally they have ſtrict Laws for payment of them.

a *In Enchirid. Artic. Decret. Regni Hungar. à* Sambuco *edito.*

In the Statutes of *Poland*, it appears that [b] about M. CCC. LXX. under King *Cazimir* the Second,

b *J. Herbert in Stat. Poloniæ lit D. & Jacob. Piluſius leg. Polon. lib. 1. cap. 4.*

ſecond, the Clergy (eſpecially for the Dioceſs of *Cracow*) made divers Laws (with his conſent) upon great differences about the paying of Tithes. One in ſpecial is, that Tithe muſt be paid of all that increaſes through the labour of the Plough, *exceptis rapis, papavere, caulibus, cepis, allio, & quæ his ſunt ſimilia in hortis*; and *Si quis ligoniſando plantaverit, Decima ab eo nullatenùs exigatur.* Some other Particulars they have about paying Tithe of Hemp and Flax (which happens ſometime to be more, ſometime leſs than a Tenth; becauſe the certainty is only from the number of Beaſts uſed to the Plough) and of other things; whence it appears that the uſe of Tithing there is not conſonant to the Canon Law. And *Theodor Zawake* delivers it for a Law of this Country, that *Decimæ ex terris vaſtatis accipi non debent*, which I think is to be refer'd to a thirty years liberty of non-payment given, eſpecially by *Bodantza* Biſhop of *Cracow*, to ſuch as were Tenants of Lands lately waſted by the *Lituanians* and *Tartars*, which is declared in the Law, remaining at large in the Collections of *Herbort* and *Prilusius*; whither for more Particulars I refer you.

In the Laws of *Suethland* and *Gothland*, the Text [c] is, *Decimæ ſeparentur & reponantur in agro, quarum tertiam partem ſuſcipiat Presbyter, & de reliquis duabus partibus capiat Eccleſia tertiam partem*; which I underſtand ſo, that the Parſon

[c] *Ragwald. Itegmundi de Jure Eccleſiaſtico, lib. 1. cap. 7.*

ſon is to have all ſaving a third part out of the two parts, which were to be imployed on maintenance of the Church.

d Statut. David 2. cap. 42. §. 3.

In *Scotland* by a Law[d] of *David* the Second about M. CCC. XL. it was conſtituted that no man ſhould hinder the Clergy in diſpoſing Tithes: *Sic quod ſuis Decimis poſſint pacificè & cum integritate gaudere, ſub pœna Excommunicationis, quoad Clerum. & Decem librarum penes Regem.* And Tithes there, have been (and in many[e] places are paid) Parochially, yet alſo granted, altered, and diſpoſed of by[f] poſitive Law as in other Countries; in the late Plantation of new Churches ordained by the laſt Parliament[g] there, manſe and glebe and vitaile are aſſigned for maintenance to the Rectors, but not Tithes. And after the Statute of *Annexation* in the eleventh Parliament of our preſent Sovereign, whereby Church Revenues (ſaving Parochial Tithes, Manſe and ſmall glebe, and ſome other ſpecial poſſeſſion) were reſumed to the Crown, an Act was made in the Parliament[h] following againſt a kind of infeodations (which they call *Erections* of *Temporalities and teindes of Kirkland into temporal Lordſhips*, ſaving ſuch as had been before erected. And for the particular courſe of ſetting out payments of Tithes ſome ſpecial Laws of late time they have in *Scotland*, and in the other States before ſpoken of; but they belong not ſo much hither, being not

e Vide Parl. 22. Jac. 6. act. 9.

f Vide Parl. 9. Jacob. 6. & 11: ejuſd. cap. 29.

g Parl. 22. Jac. 6. act. 3.

h Parl. 12. Jac. 6. cap. 119.

not of the eſſential part of the practice of payment nor of the received right of Tithes. Therefore I wholly omit them. One example of an Appropriation in *Scotland* may be here not untimely added, which falls about the year *M.* CC. XC. and ſhews a kind of arbitrarie diſpoſition (even at that time) of Parochial Tithes of Lands lying there, in a conveyance of a lay-mans made to the Monaſtery of *Giſeburn* in *Yorkſhire*. The Grantor was that *Robert de Bruis*, afterward King, & one of the Anceſtors of our Soveraign. The Original thus ſpeaks. [1] *Omnibus ad quos preſens ſcriptum pervenerit* Robertus *filius* Roberti de Brus *Dominus* Vallis Anandiæ *ſalutem in Domino ſempiternam. Noverit univerſitas veſtra me conceſſiſſe & preſenti ſcripto confirmâſſe Deo & Eccleſiæ Sanctæ Mariæ de* Giſeburn *& Canonicis ibidem Deo ſervientibus & ſervituris, Eccleſiam de* Anand *cum terris, Decimis, & poſſeſſionibus ad eam pertinentibus & Eccleſiam de* Logmaban *cum terris Decimis & poſſeſſionibus ad eam pertinentibus, & Eccleſiam de* Kirkpatric *cum Capella de* Logan *& omnibus ſuis pertinentiis & Eccleſiam de* Rainpatric *& Eccleſiam de* Cumbartres *& Eccleſiam de* Gretenhowe *cum omnibus pertinentiis earum; Tenendum & Habendum Deo & præfatis Canonicis & eorum ſucceſſoribus liberè quietè & honorificè, Ita quod liceat eis perpetuis temporibus de Decimis prædictarum Villarum, libere diſponere & ordinare pro voluntate ſua,*

[1] Servatur autographum in Theſauro Cottoniano.

ſua, & cuicunque voluerint eas ad firmam dimittere dare vel vendere, & alio quocunque modo voluerint & ubicunque voluerint commodum ſuum facere ſine Impedimento mei & haeredum meorum & hominum noſtrorum, &c. The Seal, in green Wax, annexed to it, hath impreſſion of a Knight armed and mounted, as for preſent onſet in the Wars, & is circumſcribed with *Eſto Ferox ut Leo.*

How the Laws of *Ireland* ſtand for Tithes, is beſt ſeen in the Statutes of that Countrie of 28. *Hen.* 8. *cap.* 17. of diſſolutions, and 33. *Hen.* 8. *cap.* 12. of payment according to ancient cuſtom and recovery of Tithes, after the diſſolution, given into lay hands, in like manner as in *England.* And here may be no unfit place to remember that antient Law ordained by [k] *Henrie* the third, within the Archbiſhoprique of *Dublin*, whereby it was commanded that every man *non expectato mandato Regis vel aſſenſu, de gurgitibus & Piſcariis, Eccleſiis in quarum Parochiis ſunt praedicti gurgites vel piſcaria, Decimas ſolvant; quia R. non vult in periculum animae ſuae, hujuſmodi Decimas detineant.* We purpoſely omit particular mention of ſuch of the reformed Churches, as in this laſt age have brought their Miniſtery to ſtipends, and altered almoſt all the former practice of Eccleſiaſtique policie. For the *practice of payment*, and other diſpoſition of Tithes, and for the *Laws*, and *Opinions*, touching the right of them, thus much. But whatever this

[k] *Rot. Pat.* 14. *Hen.* 3. *memb.* 4.

this Kingdom of *England* might have ſpecially afforded, *for Laws and practice of Tithing*, ſhall by it ſelf, in its own ſingular order, be next delivered.

CAP. VIII.

The Laws *of* England *made in the* Saxon mycel rynoder or pitenagemoter, *in* Parliaments, *and in the* Councells *here held either* National *or* Provincial, *or by the* Pope, *for the due payment or diſcharge of* Tithes *in this Kingdom.* Petitions *or* Bills *in* Parliament *touching them, are inſerted, all in their courſe of time.*

MOſt of the *Engliſh Laws*, *Conſtitutions*, and *Bills in Parliament*, that are reſerv'd to this place, and here collected, were originally written in *Saxon*, *Latin*, or *French*; and the *Saxon*, for the moſt part, were antiently (but it ſeems ſince the *Norman* conqueſt) turn'd into a barbarous Latin that yet better ſhews their meaning than a purer. Such as are found in *Latin* only I have faithfully delivered according to the Copies that gave them. Neither durſt I ſuſpect that any Reader fit for the matter ſhould need an Interpreter. No otherwiſe have I done in what is of the old *French*; it can hardly be any thing but inexcuſable ſloth, that can trouble any Reader (that is fit alſo for the matter) in the

underſtanding it. But in regard the old *Saxon* is known at all to few, and that hardly any better interpretation of the Laws written in that language can be then the old barbarous Latin, I have joined always (where it might be) both the *Saxon* and the *Tranſlation*. To have left out the original, had prevented ſome freedom of the the Readers judgment, and tied it to the tranſlators. To have added no tranſlation, had been as a purpoſe to have troubled even the fitteſt Readers with a ſtrange Tongue; which alſo to have otherwiſe interpreted, had been but to envie them the help of thoſe Ancients (that had better means to know the interpretation of thoſe Laws) and ſo make them look only as through Spectacles of mine new made. I was willing to give all (as the courſe of the collection would permit) that herein might help to make a ground of free judgment. Yet alſo where I ſee cauſe of note I add it, but refer all to able cenſure. The *Laws* and *Conſtitutions* thus ſucceed.

I. An antient [r] collection of divers *Canons* writen about the time of *Henry* the firſt, with "this inſcription of equal age; Incipiunt ex-"cerptiones Domini Ecgberti Archiepiſcopi "*Eburace* Civitatis, de jure Sacerdotali, *hath* "*theſe words*, Ut unuſquiſq; Sacerdos cunctos "ſibi pertinentes erudiat, ut ſciant qualiter De-"cimas totius facultatis Eccleſiis divinis debitè "offerant. *And immediately follows*, ut ipſi Sacer-"dotes

[r] *Mſs. in Bibliotheca Cottoniana.*

"dotes à populis ſuſcipiant Decimas; & nomi-
"na eorum, quicunque dederint, ſcripta habe-
"ant, & ſecundum authoritatem Canonicam co-
"ram teſtibus dividant, & ad ornamentum Ec-
"cleſiæ [l] primam eligant partem, ſecundam au-
"tem ad uſum pauperum atque peregrinorum
"per eorum manus miſericorditer cum omni
"humilitate diſpenſent; tertiam verò ſibimet-
"ipſis Sacerdotes reſervent. If the credit of this be valued by the inſcription, then it is about DCCC. L. years old. For, that *Ecbert* lived Archbiſhop of *York* from the year DCCXLIII. to DCC. LXVII. But the authority of that Title muſt undergo cenſure. Whoever made it, ſuppoſed, that *Ecbert* gathered that Law and the reſt joyn'd with it out of ſome former Church-Conſtitutions, neither doth the name *excerptiones* denote otherwiſe. But in that collection ſome whole Conſtitutions occur in the ſame Syllables as they are in the Capitularies of *Charles* the Great, as that of *unicuique Eccleſiæ* [m] *unus manſque integer, &c.* and ſome others which could not be known to *Ecbert* that died in the laſt year of *Pipin* Father to *Charles*. How came he then by that? and how may we believe that *Ecbert* was the Author of any part of thoſe Excerptions? unleſs you excuſe it with that uſe of the middle times which often inſerted into one Body and under one name, Laws of different Ages. But admit that: Yet, what is *ſecundum Canonicam auto-*

l Vide *ſupr. cap. 6. §. 3.*

m *Anſegiſ. lib. 1. cap. 91.*

ritatem coram teſtibus dividant? The ancienteſt *Canonica autoritas*, for dividing Tithes before witneſſes, is an old Imperial, attributed in ſome Editions [o] to the XI. Year of the Reign of *Charles* the great, being King of *France*, in others [p], to the Emperor *Lotbar* the firſt. But refer it to either of them, and it will be divers years later then *Ecbert's* death. And other mixt paſſages there plainly ſhew, that whoſe ſoever the Collection was, much of it was taken out of the Imperial Capitularies, none of which were made in *Ecbert's* time. Perhaps, the greatneſs of his name was the cauſe why ſome later Compiler of thoſe Excerptions might ſo inſcribe it, to gain it authority. For he was both Brother to *Edbert* King of *Northumberland*, and the firſt alſo that, after *Paulinus*, reſtored the name of Archbiſhoprique, and the Pall, to *Yorke*. And the heads of a Synod held in *Ecbert's* time, under King *Ethelbald*, and *Cuthbert* Archbiſhop of *Canterburie*, are yet extant; but not any expreſs mention is found in them of Tithes, although moſt of the particulars of Church-government are toucht there.

o *Edit. viti Amerbachii. cap.* 7.

p *Leg. Longobard. lib.* 3. *tit.* 8.

II. The Authors of the Centuries [q] have a Synod held in the year D. CC. LXXXVI. under two Legates ſent from Pope *Hadrian* the firſt with Letters, for reformation and eſtabliſhing of Church Laws, to *Offa* King of *Mercland*, and *Aelfwold* King of *Northumberland*, and to the two

q *Centur.* 8. *cap.* 9. *pag.* 583. *edit. Baſil.* 1567.

two Archbiſhops. The particulars of the Synod are related in an Epiſtle to the Pope from thoſe Legates (which were the firſt that had ſo come from *Rome* hither after *Auguſtine*) wherein it is related, that *Gregorie* Biſhop of *Oſtia*, one of the Legates, went into *Northumberland*, and *Theophilact* Biſhop of *Todi*, the other, to *Offa*, who with *Kenulph* King of *Weſt-Saxonie*, called a Councel for the Southern part, as *Aelfwold* for the Northern. *Gregorie* ſayes, that in the Northern parts *ad diem Concilii convenerunt omnes Principes Regionis tam Eccleſiaſtici quam ſeculares*; and after many Inſtitutions of Canon Laws "there, *the* XVII. *Chapter is*, de Decimis dan-
"dis ſicut in Lege ſcriptum eſt: Decimam par-
"tem ex omnibus frugibus tuis ſeu primitiis
"deferes in Domum Domini Dei tui. Rurſum
"per Prophetam: Adferte, *inquit*, omnem De-
"cimam in horreum meum ut ſit cibus in domo
"mea, & probate me ſuper hoc, ſi non aperuero
"vobis cataractas cœli & effudero benedictio-
"nem uſque ad abundantiam, & increpabo pro
"vobis devorantem qui comedit & corrumpit
"fructum terræ veſtræ, & non erit ultra vinea
"ſterilis in agro dicit Dominus. Sicut ſapiens
"ait: Nemo juſtam Eleemoſynam de his quæ
"poſſidet facere valet, niſi prius ſeparaverit
"Domino quod à primordio ipſe ſibi reddere
"delegavit. Ac per hoc plerumque contigit ut
"qui Decimam non tribuit ad Decimam rever-
"titur

"titur. Unde etiam cum obteſtatione præcipi-
"mus, ut omnes ſtudeant de omnibus quæ poſ-
"ſident Decimas dare; quia ſpeciale Domini
"Dei eſt; & de novem partibus ſibi vivat & E-
"leemoſynas tribuat. Et Magis eas in abſcon-
"dito facere ſuaſimus quia ſcriptum eſt; cum
"facis Eleemoſynam, noli tuba canere ante te.
The Authority of this Canon, may be known out of what is there further added. "Hæc de-
"creta, beatiſſime Papa *Hadriane*, in Conci-
"lio publico coram Rege *Ælfwaldo* & Archi-
"epiſcopo *Eanbaldo* & omnibus Epiſcopis &
"Abbatibus Regionis, ſeu Senatoribus, Duci-
"bus & populo terræ propoſuimus; & illi ut
"ſuperiùs fati ſumus cum omni devotione men-
"tis juxta poſſibilitatem virium ſuarum, adiu-
"vante ſupernâ clementia, ſe in omnibus cuſto-
"dire denoverunt, & ſigno Sanctæ Crucis in
"vice veſtra, in manu noſtra confirmaverunt,
"& poſteà ſtylo diligenti in Charta hujus pa-
"ginæ exaraverunt ſignum Sanctæ Crucis infi-
"gentes. *Then follow ſome Subſcriptions of Bi-*
"*ſhops*, Et His quoque ſaluberrimis admoniti-
"onibus, Presbyteri, Diaconi Eccleſiarum, &
"Abbates Monaſteriorum, Judices, Optimates,
"& Nobiles uno opere, uno ore conſenſimus &
"ſubſcripſimus. *After this ſo concluded in the Northern ſtate, the ſame Legate, together with* Mal-vin and Pyttel, *Embaſſadors from* Ælfwold, *take with them all thoſe Decrees and Canons, and goe*

to

to the Councel held under Offa *for the Weſtern* "*parts*, Ubi (*as the words are*) glorioſus Rex "*Offa* cum Senatoribus terræ una cum Archi- "epiſcopo *Iaenberchto* (*ſome call him* Lambert) "Sanctæ Eccleſiæ Dorovernenſis (*that is, of* "*Canterburie*) & cæteris Epiſcopis Regionum "convenerat, & in conſpectu Concilij clarâ vo- "ce ſingula capita perlecta ſunt, & tam Latinè "quam Teutonicè (*that is in* Engliſh Saxon, *which then was the ſelf-ſame with* Dutch *or* Teu- "tonique) quo omnes intelligere poſſent, dilu- "cidè reſerata ſint: qui omnes conſona voce & "alacri animo gratias referentes Apoſtolatus "veſtri admonitionibus (*the Legates ſo write to* "*the Pope*) promiſerunt ſe divino adminicu- "lante favore juxta qualitatem virium promitiſ- ſimâ voluntate in omnibus hæc ſtatuta cuſtodire. And *Offa* and his Biſhops, Abbots, and ſome Princes ſubſcribe with the croſs to it. What Copy of this Synod the Centuriators had, or whence they took it, I find not. But if it be of good authority, it is a moſt obſervable Law to this purpoſe. Being made with ſuch ſolemnity by both Powers of both States, of *Mercland* and *Northumberland*, which took up a very great part of *England*; and it is likely, that it was made general to all *England*. In the relation of the Legates to the Pope, mention is of *Kenulph* King of *Weſt-Saxonie*, his joyning with *Offa* in

calling the Councel. But the confirmations of the Decrees have no reference to him. But, by the way if you examine it by Story and Synchroniſme, *Kenulph* perhaps could not have at all to do with it. For ſome of our old Monks expreſſely affirm, that in the ſecond year [r] of *Brithric*, next ſucceſſor after *Kenulphs* death, Pope *Adrian* ſent his Legates *in Britanniam ad renovandam fidem quam prædicaverat Auguſtinus*. And that they then held their Synod at a place called *Cealchithe*. How could *Kenulph* be there then, as the Legates relate? Believe the Monks as you will. But indeed, an exactneſs here is not eaſie extracted out of the diſturbed times of our Chronicles. They talk alſo of a Synod held in *Wicanhale* for the North parts, a year or two after. Doubtleſs they intend this ſame that is extant in the Centuries; if at leaſt it be of ſufficient credit. Neither can it be ſuſpected by any circumſtance in the ſubſcriptions; which being ſo many, might have by chance ſoon got among them a character of falſehood, had it not been genuine. In the printed *Hoveden*, *Gregorie*, one of the Legates, is called *Georgeus*, perhaps for *Gregorius*. But my Ms. hath alſo *Georgius*. But if *Henry* of *Huntingdon* and *Roger* of *Hoveden* give us the time right of the Legates coming hither, then is that mention of *Kenulph*, in their ſuppoſed Epiſtle to the Pope, a plain character.

[r] *Henric. Huntingdon, lib. 4. pag. 197. & Rog. de Hoved. p. 235. edit. Londin.* ſed vide etiã *Rog. de Hovedn*, ſub ann. 786. & *Aethelward lib. 2. cap. 20. & Flor. Wigorn.* ſub. ann. 785.

character of falsehood, or ignorance, in some transcriber; who also, in one place, hath *Oswaldus* for *Ælfwaldus* King of *Northumberland*. But those which speak of that Synod of these Legates, seem to suppose it extending through the whole Kingdom. See also §. VIII.

III. In the [s] Laws made between K. *Alfred* and *Guthrun* the *Dane* (to whom the Provinces of *East-Anglia* and *Northumberland* were given to hold of the Crown) and renewed also between the same *Guthrun* and K. *Edward*. Son to *Alfred*, about the year D. CCCC this occurs, Gif þÿa Teoþunge foþheolð, gylðe laſhlite mið Denum, þite mið Englum, that is, as the old Latin Translation hath it, *Si quis Decimam contrateneat, reddat* Lashlite *cum Dacis*, Witam *cum Anglis*. *Lashlite* denotes the *Danish* common forfeiture, which, as it is thought, was in most offences XII. Ores (that was commonly XX. shillings, for XX. pence and made an Ore commonly; and sometime, according to the variation of the Standerd, [t] XVI. pence was an Ore. But in *Oxfordshire* specially, and *Glocestershire* in *Doomes day*, XX. go to an Ore) as the *English* common forfeiture, or the *Wite*, was XXX. shillings. The occurrence of these two names, is frequent in the *Saxon* Laws; and it may seem by this, that some other Law preceded for the payment of Tithes, or else that the right of them

[s] Vide *Fad. Ed. vard. & Gurbruni edit. Lambard. cap.* 6.

[t] Vide *Regist. Burton. apud Camden. in Belg. pag.* 186. edit. Lat.

was otherwise supposed cleer. For the authority of this and the rest comprehended in those of *Alfred* and *Guthrun*, observe that in their title; ⁊ ðа ꝑıꝛan eac ðe ꝓẏþþan ꝑæꝓon, oꝼꝛ ⁊ Unꝼelðan ꝥ ꝼealꝼ ꝫenıꝼoðon ⁊ mıð ꝫoðe ꝫehẏhꝛon, that is, and the Wisemen (or the Baronage) of succeeding times very often renewed that Councel of theirs, and in *bonum adduxerunt*, as in the old Translation those last words are turned.

IIII. It is reported of King *Æthelulph*, that in the year D. CCC. LV. *Decumavit* (as *Ethelward* writes) *de omni possessione sua in partem Domini & in universo regimine sui principatus sic constituit.* The words of his Charter, whereby he did it, are, *Cum Concilio Episcoporum ac Principum meorum Consilium salubre atq; uniforme remedium* (he means remedy against those miseries which the *English* had endured by *Danish* Irruptions) *affirmantes consensimus, ut aliquam portionem terrarum hæreditariam antea possidentibus omnibus gradibus sive famulis & famulabus Dei Deo servientibus, sive Laicis miseris semper Decimam* [u] *mansionem ubi minimum sit, tum Decimam partem omnium bonorum in libertatem perpetuam donari Sanctæ Ecclesiæ dijudicavi, ut sit tuta & munita ab omnibus sæcularibus servitutibus &c.* So is it reported in the Abbot of *Crowlands* History, and varies not much in *William* of *Malmesburie*, and *Nicholas* [x] of *Glocester*

u hydam, seu familiam.

x Ms. in Biblioth. Cottoniana.

ceſter, who both have it alſo at large. But in *Mathew* of *Weſtminſter*, no other *Decima* is mentioned in it, then *Decima terræ Meæ*. Out of the corrupted Language, it is hard to collect what the exact meaning of it was. How moſt of the Ancients underſtand it, is beſt known by the words wherein they ſumm it. *Ingulphus* thus of it; *Omnium Prælatorum ac Principum ſuorum qui ſub ipſo, variis Provinciis totius Angliæ præerant, gratuito conſenſu tunc primò cum Decimis omnium terrarum ac bonorum aliorum ſive catallorum univerſam dotavit Eccleſiam Anglicanam per ſuum Regium Chirographum.* And he tells us further, that *Æthelulph*, in the preſence of his Baronage, at *Wincheſter*, offer'd the Charter upon the Altar, and the Biſhops received it, and ſent it to be publiſhed in every Pariſh Church through their Dioceſes. In *Florence* of *Worceſter* it is in theſe words abbreviated. *Æthelulphus Rex Decimam totius Regni ſui partem ab omni Regali ſervitio & tributo liberavit, & in ſempiterno grophio in Cruce Chriſti pro redemptione animæ ſuæ & anteceſſorum ſuorum uni & trino Deo immolavit.* So alſo *Roger* of *Hoveden*. An old *French* fragment of the [y] *Engliſh* Hiſtory ſays, that he *diſmaſt la dime hide de tute Weſtſaxe*, and that it was *pur peſtre & veſtre les pouures*. The old Archdeacon of *Huntingdon* thus; *Totam terram ſuam ad opus Eccleſiarum decumavit propter amorem Dei & redemptionem*.

[y] Ms. ad calcem Nich. Gloceſt. in Bibl. cotton.

z In Bibl. Cotton. & apud V. C. Tho. Allen. Oxon.

demptionem sui. And in the Rimes of [z] *Robert* of *Glocester.*

The King to holye Chirche thereafter ever the more drough,
And tithed well all his lond, as he ought, well enough.

If we well consider the words of the chiefest of these Antients, that is, *Ingulphus*, we may conjecture that the purpose of the Charter was to make a general grant of Tithes payable freely and discharged from all kind of exactions used in that time according as the Monk of *Malmesburie*, & [a] *John Pike* in his suppliment of the History of *England*, express it. *Decimam*, say they, *omnium hydarum infra regnum suum à tributis & exactionibus regiis liberam Deo donavit.* That is, granted the Tithe of the profits of all Lands, free from all exactions. For, the granting of the tenth part of the Hides or Plough-lands, denotes the tenth of all profits growing in them, as well as *Decima acra sicut aratrum peragrabit*, which is used for tithing of the Profits, in the Laws of *K. Edgar*, *Ethelred*, and *Knout*, and accordingly also is this, of *Ethelulph*, related in the *Saxon* [b] Chronicles of *Peterborugh*, *Canterbury*, and *Abingdon*. He did tithe hiꝛ landeꝛ oꝼeꝼ all hiꝛ ꝼice ꝺoꝺe ꝺo loꝼe &c. as the words are. That is, *his Lands over all his Kingdom &c.* and doubtless *Ingulphus* no otherwise understood it then of perpetual right of Tithes given to the Church,

a Ms. in Biblioth. Cottoniana.

b Mist, in Bibl. Cottoniana.

Church where he remembers it by *tunc primo cum Decimis &c.* So that the tithe of prediall or mixt profits was given, it ſeems, perpetually by the King with conſent of his States both Secular and Eccleſiaſtique, and the tithe of every mans perſonal poſſeſſions were at that time alſo expreſly included in the gift, becauſe (it ſeems) before that, the payment of all Tithes had commonly been omitted. The ancienteſt of Writers that hath the Charter whole is that *Ingulphus*: but queſtionleſs it is much corrupted eſpecially in that of *portionem terrarum hereditariam antea poſſidentibus omnibus gradibus.* For what may that ſignifie? But in *Matthew* of *Weſtminſter* it is fartheſt from depravation of language; where, after *portionem*, follows *terræ meæ Deo & Beatæ Mariæ & omnibus Sanctis jure perpetuo poſſidendam concedam*; *Decimam ſcilicit partem terræ meæ ut ſit tuta &c.* The priviledg or liberty annexed to it is, that it ſhould not be only free from all taxes and exactions uſed then in the State, but alſo from that [c] *trinoda neceſſitas* (whereto all Lands whatſoever, were ſubject although otherwiſe of moſt free tenure) by which they meant their *expeditio* or military ſervice, *pontis extructio, & arcis munitio.* This freedom of that time you muſt it ſeems ſo interpret, that every man was from thenceforth to be valued in all Subſidies and Taxes according only to his nine parts of his Lands and profits; and the profits of the tenth being

[c] Vide, ſi placet. *Tit. Honor. part.* 2. *pag.* 301.

being due to the Church, were both in his and their hands hereby discharged from all paiments and taxes whatsoever. But should it be understood only for a particular consecration to the Church of one time, and of the Land [d] it self to be possessed by the Clergy or employed to other good uses of charity, then had it no more due place here among the Laws of Tithes, then the story [e] of *Robert* Earl of *Gloceſter* his giving every tenth Stone (of his provision for the building of a Tower neer to *Briſtow*) to the erecting of a Chappel, or *Edward* [f] the Confessor his building *Weſtminſter* Abbey with the tenth of one Years revenue, or [g] *Offa's* giving the Tithe of his estate to the Clergy and the Poor, or the like. But I conceive it as is before declared. It is fit to add here also another of *Ethelulphs* grants or Constitutions by the Parlamentary consent of that time, made to like purpose; and that at large, because it is not in any published Author. In the [h] Chartularies of the Abbey of *Abingdon* it occurs in the one, with the Title of *Privilegium Æthelwlfi Regis*, in the other with *Quomodo Adelwlfus Rex dedit Decimam partem regni ſui Eccleſiis.* Then follows the Charter or Constitution. *Ego Æthelulf gratia Dei Occidentalium Saxonium Rex in ſancta ac celeberrima Paſchali ſolennitate, pro meæ remedio animæ & regni poſteritate & populi ab omnipotenti Deo mihi collati conſilium ſalubre cum Epiſcopis, Comitibus, &*

d Sic intelligit, ni fallor, *Foxus Hiſt. Eccleſ. Angl. pag.* 123.

e *Camden. In Belgis. fol.* 173.

f Idem, *pag.* 308. *in Trinobantibus.*

g *Polydor. Virgil. Hiſt. Angl. lib.* 4.

h *Mſs. in Bibl. Cotton.*

& cunctis Optimatibus meis perfeci ut Decimam partem terrarum per regnum noſtrum non ſolum Eccleſiis darem, verùm etiam & Miniſtris noſtris in eadem conſtitutis in perpetuam libertatem habere conceſſimus, ita ut talis donatio fixa incommutabiliſque permaneat ab omni regali ſervitio & omnium ſecularium ſervitute abſoluta. Placuit autem Ælhſtano Epiſcopo Scirburnenſis Eccleſiæ & Swithuno Wentanæ Eccleſiæ Epiſcopo, & Ducibus communiter. Hoc autem fecimus in honorem Domini noſtri Feſu Chriſti & beatæ ſemper Virginis Mariæ & omnium Sanctorum & Paſchalis feſti reverentiam, ut Deus omnipotens nobis & noſtris poſteris propitiari dignetur. Scripta eſt autem hac Cartula anno ab incarnatione Domini noſtri Feſu Chriſti DCCC. LIV. *indictione* II. *die Paſchali, in Palatio noſtro qui dicitur* Wiltun. *Qui autem augere voluerit noſtram Donationem augeat omnipotens Deus dies ejus proſperos; ſi quis vero minuere vel mutare preſumpſerit, noſcat ſe ante tribunal Chriſti redditurum rationem niſi prius ſatisfactionem emendaverit ✠. Ego Æthelwlf Rex ✠. Ego Ælhſtan Epiſcopus ✠. Ego Swithun Epiſcopus ✠. Ego Wlflaf Abbas ✠. Ego Werferd Abbas ✠. Ego Ethered & Ego Alfred filii Regis conſenſimus*; the ancienteſt hand wherein this is written in the Chartularies, is of about *Henry* the Second his time; and for the credit of it, you muſt relie upon thoſe Chartularies. It differs in date both of place and time from the other; this

is dated at *Wilton*, that at *Wincheſter*; this in DCCC. LIV. the ſecond indiction at Eaſter; that DCCC. LV. and in ſome, the fourth Indiction, and in others, the third in *November*; ſuch a difference of Indictions may well be, if the Authors that deliver it, added that note for the time that they conceived it to be made in, not for the very Characters of the Date of the Original Inſtrument; for, *November* falling in the fourth Indiction Imperial, may be of the third Indiction Pontificial; the one beginning in *September*, the other in *December* following; that difference is in the relations of it between *Florelegus* and the Abbot of *Crowland*; and the Abbot perhaps reckoned by the Pontificial Indictions, and the other Monk by the Imperial; if at leaſt their Copies be not corrupted. But whereas in *Malmesbury* the Date of the firſt Charter is DCCC. XLIV. *Indict.* IV. V. *Nonas Novembris*; plainly it is falſe, neither could that Indiction be in the Character of the year DCCC. XLIV. which fell in the ſeventh Indiction.

i *Ms. in Biblioth Cattonian, cap. 65 & variis cauſis.*

V. In a Volume [i] that belonged to the Abbey of St. *Auguſtine*'s in *Canterbury*, titled *Statuta Synodorum*, written in a hand of about DCCCC. years after Chriſt, or ſomewhat more, one Paragraph is *de Decimis*. But the Moſaical Commandment (for few of the Judicials of *Moſes* are wanting in it) and a paſſage in St. *Auſtine* are the only Authorities brought for them. No Coun-

Council or poſitive Canon is mentioned in it to that purpoſe; although for other things, *Synodus Romana*, *Synodus Auraicenſis*, *Narbonenſis*, and very often *Synodus Hybernenſis* occur in it. The Authors uſed, by him that compiled it, are St. *Auguſtin*, St. *Hierom*, St. *Gregory*, and *Iſidore*, (which were in thoſe middle times the [k] chief, almoſt the only Fathers of the Church that were read) and ſometimes *Gildas* and St. *Patrike*; whence it may ſeem that it was collected by ſome *Briton* or *Iriſhman*; and certain Canons of that Abbot *Adomann* ſpoken of by [l] *Bede*, are annext to it. Neither did the Author of it doubt but that he had all the Councils of credit that preceded him, as his own Teſtimony in his Preface juſtifies; there, after a ſhort relation of the IV. moſt known and generally received, of *Nice*, of *Conſtantinople*, of *Epheſus*, of *Chalcedon*, he adds: *Hæ ſunt quatuor Synodi principales, fidei Doctrinam pleniſſimè prædicantes; ſed & ſi qua ſunt Concilia quæ ſancti Patres ſpiritu & divino pleni ſanxerunt poſt iſtarum quatuor autoritatem, omni manent ſtabilia vigore, quorum geſta in hoc opere condita tenentur.* But to the ſame Volume is joyned another Collection, with this Inſcription, *Incipiunt Pauca Judicia quæ deſunt de ſupraditis*, in which the old Canons of *Rome* (that is, the *Codex Romanæ Eccleſiæ*, or ſome other in the nature of it, which was received into theſe Northern Parts, as a Director of the Church, in the

[k] *Quod colligi poſſit ex Leonis Epiſt. in Diſt. 20. cap. 1.*

[l] *Eccleſ. Hiſt. lib. 3. cap. 16.*

eldeſt times of Chriſtianity here, as you may ſee in our [m] ancienteſt Church-Story) is cited, and divers Authorities out of thoſe Fathers and a few of the elder Councils. But, no denominated Pontifical or Synodal is remembered there for Tithes. Only the Texts of *Moſes* for Tithes, Firſt-Fruits, the Firſt-Born, and ſuch more are numbered together; and then follows a Chapter *de Diviſione Decimarum*, with this Declaration: *Lex dicit; ipſi Sacerdotes populi ſuſcipiant decimas, & nomina eorum, quicquid dederint, ſcripta habeant & ſecundum autoritatem Canonicam &c.* in the ſelf ſame words as are before attributed to the Excerptions of *Ecbert*. The exact age of thoſe *Statuta Synodorum*, appears not. But they were collected about King *Athelſtan*'s time; at leaſt, then was the Copy that remains of them written, as may be conjectured alone (if other Reaſons failed) from the Similitude 'twixt the Character found in them, and that of the Text of the Holy Evangeliſts, which King *Athelſtan* cauſed to be fairly written, and conſecrated to St. *Cutbert*. That Text with thoſe *Statuta* are both yet preſerved from the injury of Time, among thoſe ineſtimable Monuments of that Noble Knight Sir *Robert Cotton*. For thoſe *Pauca Judicia* that follow; they are of a later hand than the *Statuta*; but of what time, it ſufficiently appears not. That *Lex dicit* in them may be refer'd to the Canon [n] related out of the Excerptions of

[m] Protuli eundem librum Canonem, ait Theodorus Cant. Arch. in Concil. circa ann. 670. apud Hertford celebrat. Bed. Hiſt. Eccleſ. lib. 4. cap. 5.

[n] Sup. §. 1.

of *Eubert*. But whence that Canon is originally, I have not yet learned.

VI. King *Athelstan* [o] about the year DCCCC XXX. By advice and consent of the Bishops of the Land made a general Law for predial and mixt Tithes, in these words. Ic Æþelstane cyning mid geþeahte pulfhelmes mines hihbisceopes. ⁊ oþra minra bisceopa bebeode eallum minum gereafum ðuph ealle mine rice (on þæs drihtænes nama. ⁊ ealra halgena, ⁊ for mine lufu) þ hi ærost minesagenes. æhtes ðam geoþe gesyllaþ. ge ðæs libbendes yrfes. ge ðes gearlice pestmes; [p] ⁊ þ ilce gedo eac ða bisceopas heora gephilcra. ⁊ each mine ealdormanna. ⁊ gereafa; ⁊ ic pille þ mine bisceopes ⁊ gereafa ðæs demaþ eallum ðe hio gehyrsumian gebyraþ. ⁊ þ ilce to þam tide fulfremaþ ðe pe hio settaþ. ⁊ þæs sie to ðæm dæg ðær beheafdunges Seint Iohannes þæs fulhteres; which is anciently thus turned [q] into Latin. *Ego Athelstanus Rex Consilio* Wulfhelmes *Archiepiscopi mei & aliorum Episcoporum meorum mando præpositis meis omnibus in toto regno meo, & præcipio (in nomine Domini & Sanctorum omnium & super amicitiam meam) ut inprimis de meo proprio reddant Deo Decimas tam in vivente captali quam mortuis frugibus terræ, & Episcopi mei similiter faciant de suo proprio & Aldermanni mei, & Præpositi mei. Et volo ut Episcopi & Præpositi mei, hoc judicent omnibus qui eis parere debent, & hoc ad terminum expleant quem eis ponimus, i.e. decollatio S. Johannis Baptistæ.* and the

o *Lag. Athelst. edit.* à Lambardo.

p In Ms *Cottoniana* inseruntur illic hæc verba: spa man rightast mæge. oððe gemetan, oððe getellan, oððe pægan. *i.* in the justest way that may be; either by measure, number, or weight.

q *In Historia Jornallensi* Ms. in Bibl. Cotton.

the example of *Jacob*, with a Text or two out of holy Writ and S. *Augustin*, is added to move Devotion. That Translation agrees wholly enough with the *Saxon*, saving in those words *mortuis frugibus*; the *Saxon* being yearly Fruits, which also another [r] Copy of this Translation expresses by *ornotinis frugibus*, corrupted plainly from *hornotinis frugibus*, i. e. *the Fruits of one and the last year*, or *the yearly increase*. And perhaps some ignorant Monk finding *ornotinis*, and not understanding it, because he would be sure to square it to his own ability of learning, made it *mortuis*. Which kind of changing hath examples enough in bold but ignorant Criticisme. That which the old Translator calls *vivens captale*, is, libbender ÿnfer i. e. *living cattel*, in the *Saxon*; which hath often [s] ceap also for *chattels*, and sometimes especially for *living cattel*, but the old [t] Latin of the *Saxon* Laws turns ceap also into *captale*, whence *cattalla* is like enough to have discended. And the first stock of Cattel which by King *Ina's* * Laws was to be given to Orphans, was called frumftol in *Saxon*, but *primum captale* in the old translations. In *Brampton's* [u] History (which is full of the Laws of the *Saxon times*) after those constitutions of *Grateley*, part of which are in *Lambard's* Αρχαιονομία, follows a thankful acknowledgement to *K. Athelstan* for this Law of Tithes, in these words. "Karissime; Episcopi tui de *Kent* & omnis *Kent-*

r Vet. Leg. ibid. Ms.

s Ina Leg. cap. 17. 40. & 42.

t In dicta historia Jornallens. Ms.

* Cap. 38.

u dict. Hist. Jornallens.

"*Keutsiræ*, Thayni, Comites & villani tibi Do-
"mino dulcissimo suo gratias agunt, quod no-
"bis de pace nostra præcipere volusti, & de
"commodo Nostro perquirere & consulere;
"quia magnum opus est inde nobis divitibus &
"egenis. Et hoc incepimus, quantâ diligentiâ
"potuimus, consilio horum sapientum quos ad
"nos misisti. Unde, Karissime Domine, primum
"est de nostra Decima, ad quam valdè cupidi
"sumus & voluntarii & tibi supplices gratias
"agimus admonitionis tuæ.

VII. About D. C C C C. XL. *Edmund* King of *England* in a Miccline Synod, that is, a great Synod, or Councel, a kind of Parliament, both of Lay and Spiritual men (which are exprest by godcundra and poplcundra) held in *London*, made this [x] Act. Teoþungum þe bebeodaþ ælcum Cristenum men be his Cristendome. ⁊ cyricsceat. ⁊ ælmesfeoh'⁊ Gif hit hra don nylle, ny he amansumod. Which is antiently [y] turned; *Decimam præcipimus omni Christiano super Christianitatem suam dare; & emendent* Cyrycsceatum *i.e. Ecclesiæ censum, &* ælmesfeoh *i. Eleemosynæ pecuniam, si quis hoc dare nolverit, excommunicatus sit.* And all agrees with the Saxon, saving only, that nothing answers to the word *emendent*. That *Cyrycsceat* is a Church rent of Corn, or the first fruits of Corn yearly in those times, and regularly payable at S. *Martins* day to the Church [z]; and is sometimes written *Curcscet*; some

x *Leg. Edmund. apud Lambard. cap.* 2.

y *In Dict Hist. Iornallensi.*

z Videsis *Ina leg. cap.* 4. & 62. & apud *Malmesbur. lib.* 26. 11. *Cnutonis* R. *Epist. ad Anglos.* & *Lambard. in explic. verb. in* Primitiæ. & *Canuti leg. c.* 10. & *Edgari. leg. cap.* 2. & 3.

ſometimes otherwiſe. And in an old Ms. Expoſition of Law-Terms, occurs, *Cherchefonde, vne meſure de Ble que chacun homme ſoleit enuoir a Seint Eſgliſe en temps de Bretons.* Plainly, Church-Corn is underſtood; and *Chyrk ſceat*, that is, Church-Rent is the Original whence *Cherche ſonde* is there corrupted. And among Articles [a] inquirable by every Eſcheator in 44 *Hen.* 3. about the Profits, Eſtate, Tenure, and Iſſues of the King's Tenants, one is of *Cherch-ſcot tam in blado quam in Gallinis, & in aliis exitibus.* It is *Circſet* often in the Book of *Domeſday.* Where it is found belonging ſometimes to Abbeys, ſometimes to Pariſh Churches, ſometimes to others. It was ſtill as Firſt-Fruits. And this Old Teſtimony is for the Antiquity and continuance alſo of payment of it here. *Churcheſſet* [b] certam menſuram bladi tritici ſignificat quam quilibet olim ſanctæ Eccleſiæ die ſanctæ *Martini* tempore tam *Britonum* quam *Anglorum* [c]: Plures tamen *Magnates* poſt *Normannorum* adventum in *Angliam* illam contributionem, ſecundum veterem Legem *Moyſi*, nomine primitiarum dabant, prout in brevi Regis *Knuti* ad ſummum Pontificem tranſmiſſo continetur, in [d] quibus illam contributionem appellat *Chirchſed*, quia ſemen Eccleſiæ. But what the Authour means by that Letter or Brief of King *Knout*, ſent to the Pope, I as little know, as why he cites that for Authority

[a] *Annal. Monaſt. Burtonenſ. Ms.* apud V.C. Thom. Allen. Oxonienſ.

[b] *Fleta Ms. lib. 2. cap. 47.*

[c] Supple *ſolvebant*

[d] 3. *qu.*

authority to prove what the Baronage did after the *Normans*. Indeed, an Epistle is [e] extant, which *Knout* sent into *England* (by *Living* Abbot of *Tauislok*) as he was taking his journey homewards from the Pope, and therein, mention is of this *Curc-scet*. Of any other I am yet ignorant. That Aelmeꝛꝼeoh, or Almes money, was the *Peeter*-pence due yearly at the first of August, by institution, as some will, of King *Ina*, as others, of King *Æthelulph*. And they were called also Romeꝼeoh, Romeꝛcoꝛ, Heoꝼþpenıng.

e Apud *G. Malmesbur. lib. 2. 6. 11.*

VIII. Of the same time, some Constitutions are extant, [f] made by *Odo* Archbishop of *Canterburie* (yet not, for ought appears by them, in a Synod) with this Preface, *Ego* Oda *humilis & extremus divina largiente clementia, almi Præsulis & Pallii honore ditatus, quædam documenta omni Christicolâ non indigna, quæ à præcedentibus illustrium virorum Præceptis certissima comperi, ad consolationem Domini mei Regis scilicet* Ætmundi *omnisque populi excellenti Imperio ejus subjecti, in ista cartula, coadunare decrevi. Unde devotissimè obsecro & clementissimè hortor audientum mentes ut si quando hæc recitanda audiant interiùs videlicet & in corde, frequenti meditatione plantent, & multiplici bonæ operationis munere ex eo fructum pacatissimum in tempore messis sibi colligant. Primo capitulo præcipimus & mandamus ut Sancta Dei Ecclesia &c.* And so goes on with some particulars which belong to Church-

f *Ms. compact. in Vol. quod* Codex Eccles. Landau. *dicitur in Bibl. Cotton.*

discipline the X. and last Chapter being only for Tithes in these words. *X. Capitulo mandamus & fideliter obsecramus de Decimis dandis sicut in Lege scriptum est. Decimam partem ex omnibus frugibus tuis seu primitiis deferas in domum Domini dei tui. Rursum Propheta, Afferte,* [g] *inquit, omnem Decimam in horreum meum, ut sit cibus in domo mea & probate me super hoc si non aperuero vobis cataractas cœli & effudero benedictionem usque ad abundantiam & increpabo pro vobis qui comedit & corrumpit fructum terræ vestræ, & non erit ultra vinea sterilis. Unde et cum obtestatione præcipimus ut omnes studeant de omnibus quæ possident dare Decimas; quia speciale Domini Dei est; & de novem partibus sibi vivant & Eleemosynas tribuant.* Where note, the syllables are of that which in the Centuries is refer'd to an *English* Council of D. CC. LXXXVI. Before in §. II. For this of *Odo*, although no express Occurrence denote, that it was in a Council, yet you may much incline to believe it was in one, if you compare it with [h] what you find in the Monk of *Malmesburie* of him.

g Malach. 3.

h De gest. Pontif. lib. 1. fol. 114. 2.

IX. King *Edgar* about the year D. CCCC. LXX. mid hiſ ꝑitena ꝺeþeahte, that is, with the advice and counsil of his Wisemen, or Baronage, ordained, that the Church should enjoy all her Liberties, ⁊ [i] man aꝺẏꝼe ẏlce ælc teoþunꝺe to þæm ealdan mẏnſtꝛe ðe ſeo hẏꝛeſſe to hẏſþe; ⁊ ſi þonne ſꝑa ꝺeleaſt. æꝺþeꝛ oꝼ ðæꝺneſ inland. ꝺe oꝼ neatland ſꝑa hiſ ſulh ꝺeꝺa;

i Leg. Edgari. cap. 1. 2. & 3. apud Lamb.

2. Cif

2. Gif hpa ðonne degna sý. ðe on his boclande eýrican hæbbe ðe legerisrtopee on sy. gesýlle he ðonne ðritdan dæl his agenre teoþunge into his cýrican;

3. Gif hpa cýrican hæbbe ðe lægerstope on de sý. ðonne do he of ðæm nýgan dælum his lreost þ þ he pille;

4. And sý ælere geoguþe geoþunge gelæst be Pentecosten; ⁊ þæra eorþ þæstma be Emnihte;

5. Gif hpa ðonne þa teoþunge geleastan nelle spa pe ge-cpæden habbap. fare ðæs Cýninges gerefa to. ⁊ þæs Bisceopes. ⁊ þæs mystres mæssepreost. ⁊ niman unþances ðone teoþen dæl to ðæm miostre ðe hit to gebýrrige. ⁊ tæcan him to þæm nigoþon dæl; ⁊ to dæle mon þa eahta dælas on tþa. ⁊ fo se [k] hlaford to healfan. to healfan se bisceop. sy hit cýninges man. sý hit ðegenes; that is, in the old [l] *Latin* Copies:

1. *Et Reducatur omnis Decimatio ad Matrem Ecclesiam cui Parochia adjacet, de terra* [m] *Thainorum & Villanorum, sicut* [n] *aratrum peragrabit.*

2. *Si quis Thainorum sit qui in feodo suo Ecclesiam habeat ubi cæmiterium sit, det ei tertiam partem Decimæ suæ.*

3. *Si non sit tibi atrium* (but the *Saxon* hath here the same word as before for *cæmiterium*, that is, lægerstope) *det, ex suis novem partibus, Presbytero, quod vult.*

4. *Et omnis Decimatio Juventutis reddita sit ad Pentecosten; & Terræ frugum, ad Æquinoctium.*

k Land hlaford *in Ms.*

l Apud *Brampton in Hist. Jornal. fol. 54. in biblioth. Cottoniana.*

m i. *Baronum* seu *liberè tenentium.*

n Vide *infra* §. IX. & X.

5. *Si quis Decimam dare sicut diximus noluerit, adeat Præpositus Regis & Episcopi & Sacerdos illius Ecclesiæ, & reddant Ecclesiæ cui pertinebit Decimam suam; & Nonam partem demittant ei qui Decimam suam detinuit, & octo partes in duo dividantur. Dimidium Domino, dimidium Episcopo; Sit homo Regis, sit homo Thaini.* This *Latin* agrees well enough with the *Saxon*; although in this last §. *si quis*, for *Episcopi* [o] *Sacerdos*, *Lambard* hath *& Episcopus & Sacerdos illius Ecclesiæ &c.* But whereas the Translator uses the word *Ecclesia* only for *Church*; in the *Saxon*, that which he calls *Matrem Ecclesiam*, is denoted by ealðan mýnſtre, and that *Ecclesia*, in §. 2. *si quis Thainorum*, by Cýrican; whence, our word *Kirk*, or *Church* is framed. For the difference of *Church* and *Minister* here, somewhat where anon we speak of *Parishes* of that time.

o Vide §. XII. & XVII.

X. A Councel or a kind of Parliament held under King *Ethelred*, by the advise of his two Archbishops, *Elfpheg* and *Wulfstan*, (about the year M. X.) is yet extant, wherein Laws are for Tithes. But because it remains only a Manuscript of about the time of the *Norman* Conquest, the Preface of it shall be here first noted; that thence the authority of it may be the better undestood. It is inscribed with [p] *Incipiunt Synodalia Decreta*; then begins with; Quodam "tempore contigit ut Regis *Æthelredi* edicto "con-

p *Ms. in Biblioth. Cottoniana.* in volumine *Ordo Coronationus* qui ævo Saxonico in usu erat narratur.

" concrepante; Archipræſulumque *Alfeagi* &
" *Wulfſtani* hortatu inſtigante, univerſi Anglo-
" rum Optimates die Sancto Pentecoſtes ad lo-
" cum ab indigenis *Eanham* nominatum acciti
" ſunt convenire. Collecto itaque ibidem Chri-
" ſticolarum cœtu venerabilum quamplurimo-
" rum de Catholicæ cultu Religionis recupe-
" rando, deque etiam rei ſtatu publicæ repa-
" rando vel conſulendo plura & non pauca ut-
" pote divinitus inſpirati ratiocinando ſermo-
" cinabantur. *Then follows ſome Conſtitutions about Monks, Abbots, Canons, and other of the Clergy. After which, the Councel goes on with,*
" Poſt hæc igitur Archipontifices prædicti Con-
" vocatâ plebis multitudine collectæ, Regis E-
" dicto ſupraſcripti omniumque conſenſu Ca-
" tholicorum omnibus communitèr prædica-
" bant unum Deum colendum eſſe debere, Pa-
" trem videlicet &c. *And divers Canons ſuc-*
" *ceed; and among them occurs,* Nec Eccleſiæ
" antiquitùs conſtitutæ Decimis vel aliis poſ-
" ſeſſionibus priventur ita ut novis Oratoriis
" tribuantur; *Which very words are found in an elder Councel of* Mentz, *and in the Imperial Capitularies. Then immediately follows,* " Deci-
" mationes Frugum & Vitulorum & Agnorum,
" necnon & Aratrales Eleemoſynæ, Eccleſiaſti-
" caque munera Domino per ſingulos annos
" temporibus rependantur congruis. Eleemo-
" ſynæ videlicet Aratrales quindecim diebus

" poſt

" post Pascha peractis; Vituli quoq; & Agnicu-
" li Decimales erga Pentecosten, Frugum verò
" terræ Decimationes circa omnium festivita-
" tem Sanctorum Ecclesiis persolvantur oppor-
" tunis. To it, is joyned the most part of it [q] in *Saxon*. But that Preface is wholly therein wanting. Neither doth any thing in the *Saxon* answer to that, *Nec Ecclesiæ antiquitus constitutæ &c.* But those Tithes are there reckoned among goder gerighter, that is, *things due unto God.* And the *Saxon* text for them is; geogoþe teoþunge be Pentecorten. ⁊ eorð þærtma be ealra halgenamærran, that is, *the Tithe of young Cattel is to be paid at Whitsontide, and of Fruits of the Earth at Alhollows.* And according to this, in an old *Saxon* [r] collection of Christian Duty, Elc man, (saies the Author) teoðunga gelærte mid rihte, that is, *Let every man pay his Tithes justly.* Those *Aratrales Eleemosynæ* were called rulh ælmerran, that is, *Plough-almes*; which was a peny to be paid of every plough-land. And the *Ecclesiastica munera* were only the first fruits of Corne paid at S. *Martins* day; Whereof before §. VIII.

q Exemplar item *Saxonicum* reperitur in Codice vetustiss. *Legum Sax.* in sæpius laudata Bibliotheca.

r *Ms. inter Leg. Saxonic. in* Bibl. Cottoniana.

XI. In some Laws of *K. Ethelred*, remaining in Abbot *Brampton* his History, we read. " [s] Omnis Thainus Decimet quicquid habet. " *and* Præcipimus ut omnis homo super di-
" lectionem Dei & omnium Sanctorum det
" Cyricsceatum & rectam Decimam suam sicut
" in diebus antecessorum nostrorum fecit quan-
" do

s *Histor. Jornallens. ibid. fol. 65.*

" do melius fecit, hoc eſt, ſicut aratrum peragra-
" bit, decimam acram, & omnis conſuetudo
" reddatur ſuper amicitiam Dei ad matrem no-
" ſtram Eccleſiam cui adjacet, & nemo auferat
" Deo quod ad Deum pertinet, & prædeceſſo-
" res noſtri conceſſerunt. The inſcription of
thoſe Laws mongſt which theſe are found, is,
*Hæc inſtituerunt Ethelredus & Sapientes ejus a-
pud Habam.* By this, and that of *Edgar* before
cited, it appears that the Tithe of every tenth
Acre according to the order of Tithing the whole
Farm, was to be paid to the Church, which al-
ſo is made more plain in the next Law of King
Knout.

XII. Gelæſte man (are the words of [t] one
of *K. Knouts* Laws made about M. XX.) goder
geriht a æghpilc geare rightlice georne; þæt is ſul-
hælimeſſe ſiftene niht ofer Eaſtran. ⁊ gegoþe teo-
þunge be Pentecoſten. ⁊ eorþ þæſtma be ealra hal-
gena mæſſan; ⁊ gif hpa þonne þa teoþunge gelæſtan
nælle. ſpa pe gecpedan habbaþ. ꝥ is ſe teoþa æcer. eal
ſpa ſe ſulh hit gegaþ. þonne fare to þæſ Cyninger
gereſa. ⁊ þaſ biſcopaſ, ⁊ þæſ land rican, ⁊ þæſ minſ-
trer mæſſeſreoſt. ⁊ niman unþanceſ þonne teoþan
dæl to þam minſtre he hit to gebyrige. ⁊ teacum
him to þam nigoþum dæl; ⁊ to dæle man þa eahta
dælaſ on tpa. ⁊ fo ſe landhlaford to healfum, ⁊ to
healfum ſe biſceop; ſy hit Cyninger man. ſy hit ðe-
gener; *this is* [u] *anciently thus turned*; Reddantur
" Deo Debitæ rectitudines annis ſingulis, hoc
" hoc

t *Lig. Canuti, cap.* 8.

u *In hiſtoria Jornallenſi fol.* 71. *b.* Ms. Bibl. Cotton. ſed optimum harum legum exemplar. extat in Bibliotheca. Sereniſſ. Principis Magnæ Brit. ad *D Jacobi.*

" eſt Elcemoſyna carucarum, XV. diebus poſt " Paſcha, Decimæ de novellis gregibus in Pen- " tecoſten, terrenorum fructuum in feſto om- " nium Sanctorum. Si quis hanc Decimam da- " re nolit ſicut omnium noſtrum commune eſt " inſtitutum, hoc eſt Decimam acram ſicut ara- " trum peragrabit, eat præpoſitus Regis & E- " piſcopi & Domini ipſius terræ cum Sacerdote " & ingratis auferant & Eccleſiæ cui pertinebit " reddant. Nonam verò partem relinquant ei " qui Decimam dare noluit. Octavas partes re- " liquas in duo dividant & ſit una medietas E- " piſcopi, alia terræ Domini, ſive ſit homo Re- " gis ſive Thaini. With this *Latin* the *Saxon* agrees. And it is almoſt but a repetition of King *Edgars* Law for Tithes. And thoſe two Paragraphs in King *Edgars*, the one touching a conveyance of a third part of the Tithes to a Church that had right of Sepulture, the other concerning a Church that wanted that right, are alſo repeated (as many other Laws of the former ages) in thoſe of King *Knouts*; which are called *Leges Anglicæ* generally in the ancienteſt Latin Copies that I have ſeen.

y In *Biblioth. Sereniſſimi Principis.*

XIII. The Copy of the Laws of *Edward* the Confeſſor that bears this Title; " Leges bo- " ni Regis Edwardi quas Guilielmus Baſtardus " poſtea confirmavit, *hath this* [z] *for Tithes*: De " omni annona, Decima garba Deo debita eſt & " ideò reddenda. Et ſi quis gregem equarum " habuerit,

z *Leg. Edward. Confeſs. cap. 8 & in Rog. de Hoveden Annal. 2. pag. 343. b.*

" habuerit, pullum reddat Decimum. Qui u-
" nam vel duas habuerit, de ſingulis pullis ſin-
" gulos denarios. Similiter qui vaccas plures
" habuerit, Decimum vitulum. Qui unam vel
" duas, de vitulis ſingulis obolos ſingulos. Et
" qui caſeum fecerit, det Deo Decimum, ſi verò
" non fecerit, lac decima die. Similiter agnum
" Decimum, vellus Decimum, caſeum Deci-
" mum, butyrum Decimum, porcellum Deci-
" mum. De Apibus verò ſimilitèr Decima com-
" modi. Quin & de boſco, de prato & aquis &
" molendinis, parcis, vivariis, piſcariis, virgul-
" tis & hortis, & negotiationibus & omnibus re-
" bus quas dederit Dominus. Decima pars ei
" reddenda eſt, qui novem partes ſimul cum De-
" cima largitur. Qui eam detinuerit per Juſti-
" tiam Epiſcopi & Regis (ſi neceſſe fuerit) ad
" redditionem * arguatur. Hæc enim prædicavit
" B. Auguſtinus, & conceſſa ſunt à Rege Baroni-
" bus & populo. But however thoſe Laws are
attributed to the Confeſſor; it is certain that as
the ordinary Copies of them are, and as they
ſpeak in the publiſhed Volume of *Saxon* Laws,
they are not without many mixtures of ſome-
what later tranſcribers.

* Forte *adigatur.*

XIV. In a Synod, [a] writen in *Saxon*, and held a-
bout the Conqueſt, divers Laws preceding, about
the puniſhment of crimes by faſting VI. VII. X.
years together with bread and water, a perſwaſi-
on follows for Almes *&c.* In it we read ꝛeoþiꝛe on

a *Recens Ms.* apud *V. C. Rob. Cotton.*

gober ert eal þe age. That is, *Let Tithe be paid of all that is poſſeſt through the Lords bounty.*

XV. Out of a *Ms.* of *Exceſter* I have ſeen [b] tranſcribed a Canon of a Councel held at *Windſore*, ſome years after the *Norman* Conqueſt (I think under *Lanfrank*) in theſe words: *Ut Laici Decimas reddant ſicut ſcriptum eſt.*

[b] *Ex Excerptis Ms.* apud eundem.

XVI. In a Convocation at *Weſtminſter* [c] held in 3. *Hen.* 1. under *Anſelm* Archbiſhop of *Canterburie*, and *Girard* Archbiſhop of *Yorke*, for both Provinces, it was ordain'd *Ut Decimæ non niſi Eccleſiis dentur.* It was not only a Synod of the Clergy; but Royal authority with the aſſent of the Baronage (at leſt of the great Nobility) was joyned with it. For thus ſpeaks the Monk of *Malmeſburie* relating it. "Anno Do-"minicæ Incarnationis 1102. Quarto autem "præſulatûs Paſchalis ſummi Pontificis, tertio "regni Regis glorioſi Henrici Anglorum, ipſo "annuente, communi conſenſu Epiſcoporum "& Abbatum & Principum totius regni, adu-"natum eſt Concilium in Eccleſia beati Petri "in Occidentali parte juxta Londoniam ſita, in "quo præſedit Anſelmus &c. *and then.* Huic "conventui affuerunt, Anſelmo Archiepiſcopo "petente à Rege, Primates regni, quatenus "quicquid ejuſdem Concilii autoritate decer-"neretur, utriuſq; Ordinis concordi curâ & ſol-"licitudine ratum ſervaretur. Sic enim neceſſe "erat; quia multis retrò annis, ſynodali cultu-

"ra,

[c] Apud *G. Malmeſb lib. 2. de geſt. Pontific. fol.* 119. *b. ad.* 1102.

"ra ceſſante, vitiorum vepribus ſuccreſcenti-
"bus, Chriſtianæ religionis fervor in Anglia ni-
"mis refrixerat. And agreeing to this reaſon is a paſſage in the [d] Synod of *London*, held under *Lanfrank* Archbiſhop of *Canterburie* in 9. *Will.* 1. *Et quod* (are the words) *multis retro annis in Anglico regno uſus Conciliorum obſolverat, renovata ſunt &c.* That Canon ſeems to have been made againſt arbitrary conſecrations of Tithes then practiced, whereof anon largely.

[d] Apud *Sand. lib. dict. fol.* 117. b. & in *Epiſt. Lanfranci Ms.* in Bibl. Cottoniana.

XVII. The Laws of *Henrie* the firſt have one title, *De placitis Eccleſiæ pertinentibus ad Regem*, and under that, are theſe words: *Si quis rectam Decimam ſuperteneat, vadat prepoſitus Regis & Epiſcopi & terræ Domini cum Presbytero & ingratis auferant & Eccleſiæ cui pertinebit reddant, & nonam partem relinquant ei qui Decimam partem dare noluit.* According to thoſe of King *Edgar* and King *Knout* [e] before related.

[e] In *lib. Rob. Scaccarii Ms. cap.* 12.

[f] §. IX. & XII.

XVIII *Alberique* Biſhop of *Oſtia*, Legat in *England* to Pope *Innocent* the ſecond, in 3. of King *Stephen*, held a Synod at *London*; and in that (as I have ſeen it [g] tranſcribed out of a Book of *Worceſter*) this Canon is, *De omnibus Primitiis rectas Decimas dari Apoſtolica autoritate præcipimus, quas qui reddere noluerit anathematis in eum ſententia proferatur. Primitiæ* muſt, it ſeems, be here underſtood for every new years encreaſe.

[g] *In Excerptis Ms. in Biblioth. Cotton.*

XIX. Under *Henrie* the ſecond a Pontificial Decree was ſent to all the Biſhops of the

Province of *Canterburie* (about the year M. C. L X X.) by Pope *Alexander* the third commanding [h] them that they ſhould admoniſh all men in their ſeveral Dioceſes, *& ſi opus fuerit*, as the words are, *Sub excommunicationis diſtrictione compellere, ut de proventibus Molendinorum, Piſcariarum, Fæno, & Lana, Decimas Eccleſiis, quibus debentur, cum integritate perſolvant.* The direction of it was, *Cantuarienſi Archiepiſcopo & ejus ſuffraganeis.* To this you may add that other [i] of the ſame Popes to the Biſhop of *Winchester*: *Mandamus, quatenùs Parœcianos tuos de Apibus, & de omni fructu Decimas perſolvere Eccleſiaſticâ diſtrictione compellas.* Both theſe were afterward made part of *Gregories* Decretalls, and are of force to this day in the Canon Law of the Church of *Rome*.

h Extr. tit. de Dec. c. 5. pervenit & in App. ad Concil. Lat. tit de Decim.

i Extr. dict. c. 6. Nuncios.

XX. In 21. of the ſame King *Henrie* the ſecond, *Richard* Archbiſhop of *Canterburie* held a Provincial Synod at *Weſtminſter*, in which were neer all the Biſhops and Abbots of his Province, as alſo the two Kings, the Father and the Son. There, divers Conſtitutions out of old Councels and Popes Decrees were publiſhed to be obſerved in his Province. Among them, one is out of a Synod at *Roſne*, in [k] theſe words: "Omnes Decimæ Terræ ſive de frugibus ſive de "fructibus, Domini ſunt & illi ſanctificantur. "ſed quia multi modò inveniuntur Decimas "dare nolentes; ſtatuimus, ut juxta Domini "Papæ

k Apud Rogerum de Hoveden in Annal. part. 2. fol. 311. a.

" Papæ præcepta admoneantur ſemel, ſecundò, " & tertiò, ut de grano, de vino, de fructibus " Arborum, de fœtibus animalium, de lana, de " agnis, de butyro & caſeò, de lino & canabe & " de reliquis quæ annuatim renovantur, Deci- " mas in egrè perſolvant; quòd ſi commoniti " non emendaverint, anathemati ſe noverint ſub- " jacere.

XXI. *Hubert* Archbiſhop of *Canterburie* by his power Legatin, received from Pope *Cæleſtin* the third, in 6. *Rich.* 1. held a Provincial Councel for the Province of *Yorke*; and therein [l] one of the Canons thus ſpeaks for Tithes. *Cum Decimæ ſint tributa egentium animarum & ex præcepto Domini dari debeant, non eſt reddentis eas diminuere. Statuimus itaq; ut de his quæ renovantur per annum, cum omni integritate Decimæ debitæ & conſuetæ conferantur; ita ut imprimis Decimæ abſq; ulla diminutione Eccleſiæ dentur, poſtmodùm de novem partibus merceàes meſſorum & aliorum ſervientium pro arbitrio ſolventis tribuantur.*

l Apud *eundem part.* 2. *fol.* 430.

XXII. The ſame Archbiſhop *Hubert* in 2. of *K. John*, [m] *Generale celebravit concilium Lundoniis apud Weſtmonaſterium contra prohibitionem Galfridi filii Petri Comitis de Eſſexe tunc temporis ſummi Juſtitiarii Angliæ.* For it appears that in thoſe elder times there [n] was great controverſie between the King, in whoſe right the Chief Juſtice of *England* here ſent out his prohibition, and

m Apud eundem *part.* 2. *fol.* 457. *b.* & 460. *a.*

n Conſulas *litt. d.* 10. *Ed.* 2. in vol. in quo *Thegotus* Dunelmenſis *reperitur in Bibliotheca* V. C. Tho. Allen. Oxon. & 41 *Hen* 3 *in Annal. Burton* apud eundem

and the Archbiſhop touching this point; whether the Archbiſhop, either as Archbiſhop or as Legate, might hold a Provincial or National Councel without authority from the Crown; but that is now declared cleer [o] and ſo practiſed that he may not. In that Councel, notwithſtanding the prohibition, he ordained thus for Tithes. " Cum Deo & Sacerdotibus Dei Decimas dan- " das, Abraham factis, & Jacob promiſſis innu- " ant, & autoritas veteris & novi Teſtamenti " necnon & ſanctorum Patrum ſtatuta declarent " Decimas de omnibus, quæ per annum reno- " vantur præſtandas; id inviolabilitèr decerni- " mus obſervandum, ita quod occaſione merce- " dis ſervientum vel meſſorum decima pars non " minuatur, ſed potius integre perſolvatur. Ha- " beant etiam Presbyteri poteſtatem ante autum- " num excommunicandi omnes fraudatores de- " cimarum ſuarum, & eoſdem ſecundum for- " mam Eccleſiaſticam abſolvendi. Huic adjici- " mus ſanctioni, ut de terris novitèr cultis, non " aliàs dentur decimæ quam Eccleſiis Parochia- " libus infra quarum limites terræ illæ de quibus " Decimis proveniunt excoluntur. Detentores " verò Decimarum, juxta Rothomagenſis Con- " cilii conſtitutum, ſi ſemel ſecundò & tertiò " commoniti, exceſſum ſuum non emendaverint " uſq; ad ſatisfactionem condignam anathematis " vinculo feriantur. Salvo in omnibus S. S. R. E " honore & privilegio. Which *Salvo* is to every of his Canons. XXIII.

[o] *Stat.* 25. *Hen.* 8. *cap.* 19.

XXIII. Among the Decretal Epiſtles of Pope *Innocent* the third, one [p] is directed. "Cantuarienſi Archiepiſcopo, ut Eccleſiis Parochialibus juſtè Decimæ perſolvantur; *and thus ſpeaks.* Pervenit ad audientiam noſtram quod multi in Dioceſi tua Decimas ſuas integras, vel duas partes ipſarum non illis Eccleſiis in quarum Parochiis habitant, vel ubi prædia habent, & á quibus Eccleſiaſtica percipiunt Sacramenta perſolvunt: ſed eas aliis pro ſua diſtribuunt voluntate. Cum igitur inconveniens eſſe videatur & à ratione diſſimile, ut Eccleſiæ quæ ſpiritualia ſeminant, metere non debeant à ſuis Parochianis temporalia, & habere; fraternitati tuæ autoritate præſentium indulgemus, ut liceat tibi ſuper hoc non obſtante contradictione vel appellatione cujuſlibet, ſeu conſuetudine hactenus obſervata, quod Canonicum fuerit ordinare, & facere quod ſtatueris per Cenſuram Eccleſiaſticam firmiter obſervari. Nulli ergo &c. confirmationis &c. Datum Lateran. II. nonas Julii.

p *Innoc. 3. in Epiſt. Decret. lib. 2. pag. 452* edit. Colonienſ.

XXIV. In a collection of divers Conſtitutions for the *Engliſh* Church, out of Councels and others, titled only [q] *Conſtitutiones cujuſdam Epiſcopi*, and written about *Hen.* the thirds time, one of Tithes occurs. *Decimas de omnibus quæ renovantur per annum & maximè conſuetas, dandas decernimus & potiſſime de molendinis & piſcariis & fœnis & apibus & de terris arabilibus &*

q In vol. *in quo Annal. Burton.* apud *u. c. Tho. Allin. Oxon.*

& ad prata poſteà vel ad paſturam redactis, ita ut occaſione mercedis ſervientum vel meſſorum decima parte non fruſtrentur quo minus eam plene percipiant. Detentores vero earundem Decimarum ſi ſemel, ſecundo, & tertio commoniti exceſſum ſuum non emendaverint; concedimus quod per capellanos locorum uſque ad ſatisfactionem congruam excommunicationis vinculo feriantur. Cum autem hi qui decimas detinuerint vel ſubtraxerint ad pœnitentiam acceſſerint, non admittantur niſi per ſe vel per manum ſacerdotis ei, cui decimæ debentur, ſatisfaciant competenter.

[r] *Conſtit. Ebor. ac. Mſ.*

XXV. A Conſtitution for due paiment of Tithes [r] was made about 30 *Hen.* 3. by *Walter Gray* Archbiſhop of *York*. I have only a note of it which I took out of the Ms. but the words I could not now tranſcribe for want of the Copy. The Copy it ſelf I once ſaw in the Library of Mr. *Henrie Savil* who is now with God.

XXVI. The chiefeſt of the *Engliſh* Canon Laws, made for Tithes (both predial and perſonal) is that commonly atributed to a Councel of *Robert Winchelſey* Archbiſhop of *Canterburie*, held in 23. *Ed.* 1. at *London*; ſome Copies [f] referring it to Archbiſhop *Boniface* and the time about 30. *Hen.* 3. or to an old Synod of *Merton*. But in the Synod of *Merton* held 42. *Hen.* 3. no part of it is extant. That I examined in the [t] Annals of the Abbey of *Burton* where the Canons of that Synod are at large collected. Yet in

[f] Vide *Lindw. in Provinc. conſt. tit. de Dec. quoniam propter* in præfationem.

[t] Ms apud *V.C. Th. Allen, Oxon.*

in the *Pupilla oculi*, written by *John de Burgo* x Part 9. cap. 9.
Chancelor of *Cambridge* in M. CCC. LXXXV.
it is called *Conſtitutio facta apud Merton per omnes Epiſcopos Angliæ.* Theſe are the words of it, as it remains in the body of the Provincial Conſtitutions. Quoniam propter diverſas conſuetudines in petendo Decimas per diverſas Eccleſias inter rectores Eccleſiarum & Parochianos ſuos, rixæ, contentiones, ſcandala & odia maxima multotiès oriuntur. Volumus & ſtatuimus quòd in cunctis Eccleſijs per Cantuarienſ. Provinciam conſtitutis, veniformis ſit petitio Decimarum & proventuum Eccleſiarum. Imprimis volumus quod decimæ de frugibus, non deductis expenſis, integrè & ſine aliqua diminutione ſolvantur: & de fructibus arborum: & de ſeminibus omnibus, & de herbis ortorum niſi Parochiani competentem fecerint redemptionem pro talibus decimis. Volumus & ſtatuimus etiam quod decimæ de fœnis ubicunq; creſcant, ſive in magnis pratis ſive in parvis ſive in cheminis exigantur, & prout expedit Eccleſiæ perſolvantur. De nutrimentis autem animalium ſcilicet de agnis; Statuimus quod pro ſex agnis & infra, ſex oboli dentur pro decima. Si ſeptem ſint agni in numero, ſeptimus agnus detur pro decima rectori, ita tamen quod rector Eccleſiæ qui ſeptimum agnum recipit, tres obolos in recompenſationem ſolvat parochiano

" à quo decimam illam recepit. Qui octavum
" recipit, det denarium. Qui verò nonum, det
" obolum parochiano vel expectet rector usque
" ad alium annum donec plenariè Decimum a-
" gnum possit recipere si maluerit: & quum ita
" exspectat semper exigat secundum agnum me-
" liorem vel tertium ad minus de agnis secundi
" anni: & hoc pro expectatione primi anni. Et
" ita intelligendum est de Decima lanæ. Sed si
" oves alibi in hieme & alibi in æstate nutrian-
" tur dividenda est decima. Similiter siquis me-
" dio tempore emerit vel vendiderit oves, &
" certum sit à qua parochia illæ oves venerint:
" earundem dividenda est decima sicut de re
" quæ sequitur duo domicilia. Si autem incer-
" tum fuerit, habeat illa Ecclesia totam deci-
" mam infra cujus limites tempore tonsionis in-
" veniuntur. De Lacte verò volumus quod de-
" cima solvatur dum durat; videlicet de caseo
" tempore suo. Et de lacte in autumno & hye-
" me nisi parochiani velint pro talibus facere
" competentem redemptionem, & hoc ad valo-
" rem decimæ & commodum Ecclesiæ. De pro-
" ventibus autem molendinorum volumus quod
" decimæ fideliter & integrè solvantur. De pa-
" sturis autem & pascuis tam non communibus
" quam communibus statuimus quod decimæ
" fideliter persolvantur: & hoc per numerum
" animalium & dierum ut expedit Ecclesiæ. De
" piscationibus & apibus sicut de omnibus aliis
" bonis

" tatem: tamen dolentes referimus quod non-
" nulli noſtræ Provinciæ contra teſtamenti ve-
" teris atque novi doctrinam de ſylvis ſuis cæ-
" duis & lignis arborum cæduarum exciſis circa
" quæ minus, quàm circa fructus agrorum, labo-
" ris impendunt, Decimas Deo & Eccleſiis qui-
" bus debentur notoriè, propter hoc quod ipſas
" in præteritum non dederunt, ſolvere contra-
" dicunt. Quòd eſtimant idcirco licere quod Le-
" gem moris de longa invaluiſſe conſuetudine
" arbitrantur, in dubium etiam revocantes quid
" ſilva cædua ſit cenſenda. Nos igitur adver-
" tentes quod ſi ſua portione Eccleſia ſit de-
" fraudata diutinè, crimen præterea non minui-
" tur ſed augetur: ac fames & penuria omni-
" umque rerum egeſtas opprimunt bene Deci-
" mas non ſolvente; hujuſmodi declaramus
" poviſione Concilii Silvam Cæduam, illam
" fore quæ cujuſcunque exiſtens generis arbo-
" rum in hoc habetur ut cædatur, & quæ eti-
" am ſucciſa rurſus ex ſtirpibus aut radicibus
" renaſcitur; ac ex ea Decimam utpote rea-
" lem & prædialem Parochialibus ac Matrici-
" bus Eccleſiis perſolvendam; nec non ſilvarum
" poſſeſſores hujuſmodi ad præſtationem Deci-
" marum lignorum ipſorum exciſorum in eis,
" ſicut fœni & bladorum omni cenſura Eccleſi-
" aſtica fore Canonicè compellendos. By this,

Tithe of all kind of Wood was payable. But in the [a] Parlament with which that Convocation was

[a] *Rot. Parl.* 17. *Ed.* 3. *nt.* 28.

was held, a Petition was exhibited by the Commons, *Que nul home ſoit tret en plee en Court Chriſtien pur Diſmes de bois ou de ſouth bois ſi nonn en lieux ou tielx Diſmes ſoloient eſtre donez.* And the anſwer was, *Soit fait de cella auxi come il ad eſts fait einz cez heures.*

XXIX. And the year following, in the next Parliament, a [b] complaint was againſt that conſtitution by the Commons. *Item prio le Commen que come conſtitution ſoit fait per les Prelats a prendre Diſme de cheſcun mannere de Bois quel choſe ne fuit unques uſee, & que niefs & femes poent faire teſtament que eſt contre reſon. que pleſe per lui & per ſon bon conſeil ordainer remedie, & que ſon people demoerge en meſme l'eſtate qu'ils ſoloient eſtre en temps de touts ſes progenitours, & que Prohibitions ſoient grantes a touz ceux que ſont empledes de Diſmes de bois ſans avoir conſultation.* Which was no otherwiſe anſwered, but with, *Le Roy voet que ley & reſon ent ſoint faits.*

b *Rot. Parl.* 18. *Ed.* 3. *art.* 9.

XXX. Three years after, in [c] 21. *Ed.* 3. a Petition was touching the ſame matter put thus in by the Commons. *Item monſtre la Commune come nadgaris Lerceveſque de Cantirbiry & les autres Prelats ordenerent une Conſtitution a doner Diſmes de ſubbois venduz tant ſolement, la ou avant ces heures nulles Diſmes furent donez, ore les gentz de Seint Eſgliſe per force de la Conſtitution pernent & demandent les Diſmes auxibien de gros bois come de ſubbois venduz & nient venduz e-*

c *Rot. Parl.* 21. *Ed.* 3. *art.* 48.

contre

contre ce qu'ils ont uſez puis temps de memorie, a grant damage de la Commone de quoi ils prient remedie del un point & del autre. To this is anſwered. *L'erceueſque de Canterbiry & les autres Eueſques ont reſpondu que tiele Diſme neſt demandee per reſon de la dit Conſtitution forſque de ſubbois.* But I well conceive not why they complain of the Conſtitution, as made only for the Tithe of Wood ſold. No ſuch thing appears in it, that juſtifies their ſuppoſition.

XXXI. This thing of Wood, and of ſuch other things as were not of Cuſtome paid, ſtill vexed the Commons. And therefore again in a Parlament [d] of 25. *Ed.* 3. they exhibit this Petition. *Item pria la Commone, que ſi la Clergie en droit des Diſmes de haut bois & ſouthbois ond' autre choſe riens demandent ou attemptent de novel forſque ſolement ceo & en les lieus d'ont ils ont eſte d' aunciens temps ſeiſis come en le droit de lour Eſgliſes, que pleiſe a noſtre Seigniour le Roy ent granter Prohibition ſans Conſultation a touz ceux que le voillent demander en tiel cas, & que les dites gents de S. Eſgliſe ſoient defenduz a demander Diſmes de groſſe bois.* Here the Commons would have had ſuch a liberty of diſcharge of Tithes not uſually paid, as the *Philippine* in *France*, and the like Edicts of ſome other Nations give the Subject. But the anſwer was, *Le Roy & ſon Conſeil ſe voillent de ceſte Petition aviſer.*

[d] *Rot. Parl. Feſt. Hill. 25. Ed. 3. art. 37.*

XXXII.

XXXII. But upon new Petition, by the Lords Temporal and Commons in the Parliament of 45. *Ed.* 3. it was enacted (as you see in the publiſhed Statutes, agreeing with the Record) That Tithe ſhould not be exacted of great Trees, being of XX. years growth, or above. And that upon a Suit commenced in the Spiritual Court for ſuch Tithes, a Prohibition ſhould be granted, as it had been in former time alſo uſed. But that uſe, it ſeems, had been ſomewhat diſcontinued, through a reverence given to that Synodal Canon of Archbiſhop *Stretford*. Although in 50. *Ed.* 3. *fol.* 10. *b. Belknap* ſaies, That it was never ſeen, that Tithes had been demanded of great Trees and of Timber. This Statute hath had ſtill force in practice to this day.

e *Plow'd. Comm. fol.* 470. 9. *Hen.* 6. *fol.* 56. *&c.*

XXXIII. Yet, notwithſtanding this Statute, the Clergy were not ſo contented; but under pretence that it was not indeed, by ſufficient authority, made a Statute, but only an Ordinance (the contrary whereof appears both in the Roll and in the conſent of following time) oft times afterward brought the Temporality in queſtion upon their Canons; in ſo much, that in the Parlament of f 47. *Ed.* 3. a Bill was put in by the Commons, reciting that of 45. *Ed.* 3. and then relating, that *les perſons de Seint, Eſgliſe entendants que cel Ordinance ne reſtreint my lour aunciene accrochements, ſurmettants æue ce ne fuiſt*

f *Rot. Parl.* 47. *Ed.* 3. *nu.* 21.

my

my afferme pur Eſtatut, ſont occaſions in Court Chriſtien a contrarie del Ordenance ſuiſdit a grant damage del people, per qui pleiſe a noſtre Seignior le Roy d' aſermer la dite Ordenance pur Eſtatut a durer pur temps avenere, & que Prohibition eſpeciall ſur meſme Leſtatut de ceo ſoit fait en la Chancellerie defendant que eux ne tignent plee en Court Chriſtien des Diſmes de bois del age avant dit, that is, of XX. years. The anſwer hereto was, *Soit tiele Prohibition grantee come ad eſte uſe d' auncien temps.* Thus did the Clergy and Commons ſo differ touching the execution of the Canons; and inſomuch, that afterward alſo the Commons put in a Bill, [g] *Que nul Eſtatute ne Ordenance ſoit faite ne grante au Petition du Clergie ſi ne ſoit per aſſent de voz Commens. Ne que vous dites Commens ne ſoient obligez per nulles conſtitutions qu'ils font pur lour avantage ſanz aſſent de voz dites Commens. Car eux ne veullent eſtre obligez a nul de voz Eſtatuz ne Ordinances faitz ſanz lour aſſent.* But the Anſwer was only thus, *Soit ceſte mature declarè en ſpecial.* This by the way.

[g] 8 Rot. Parl. 51. Ed. 3. art. 40.

XXXIV. Here may be [h] remembred that agreement in the Parliament at *Salisbury*, *Quòd conſultationes fieri debent de ſilva cædua, eo non obſtante quod non renovatur per annum.* But to what Parlament to refer that agreement, expreſſed by *Concordatum fuit coram Conſilio Regis in Parlamento &c.* I ſufficiently know not, unleſs

[h] Regiſt. Orig. fol. 4. a.

to that end of 7. *Rich.* 2. held at *Salisburie*, the Rolls whereof hath nothing of it.

1 *Rot. Parl.* 5. *Hen.* 4. *nu.* 65. XXXV. In 5. *Hen.* 4. a Bill was put in by the [1] Commons, againſt the exaction of Tithes of Quarries of Stone and Slate. Thus it ſpeaks. *Item priont les Commes que come pluſors lieges noſtre Seignior le Roy ſont ſouent foits vexiz & travaillez per Perſons & Vicaires de Seint Eſgliſe per Citations & Cenſures de Seint Eſgliſe par Diſmes de Peres & Sclattes overes & trahez, hors de Quares de ſicomne nul Diſme de nul tiel Pierre ne Sclatte unques ne fueſt demande de nulle Diſme ent paie, que pleiſe a granter que ſi aſcun Prohibition ſoit fait en le cas que nul Conſultation ſoit grant a contrarie.* Hereto the Anſwer was, *Le Roy s'adviſera.* But you may ſee hereof more in the ancient Opinions of the Judges, delivered in the [k] *Regiſter* and [l] *Fitzherbet.*

k *Orig. fol.* 59. *b.* l *Nat. Br. fol.* 53. 6. *G.*

XXXVI. In 27. *Hen.* 8 *chap.* 20. it is enacted by Parliament, That through all the Kings Dominions, every Subject *according to the Eccleſiaſtical Laws and Ordinance of this Church of England, and after the laudable Uſages and Cuſtomes of the Pariſh or other place where he dwelleth or occupieth, ſhall yield and pay his Tithes &c.* And ſome other ſpecial courſes for recovery of Tithes, are in that Act ordained.

XXXVII. By the Statute of Diſſolution of Monaſteries of 31. *Hen.* 8. *chap.* 13. it was enacted, That the King and his Patentees ſhould hold

hold the Poſſeſſions of the diſſolved Monaſteries *diſcharged and acquited of payment of Tithes, as freely, and in as large and ample manner,* as the Houſes of Religion held them at their time of the diſſolution.

XXXVIII. After the diſſolutiou of Monaſteries, to which, divers Tithes and Pariſh Churches had been appropriated, and were now ſetled in the Crown, and thence conveyed into Lay hands, an Act was made in 32. *Hen.* 8. *cap.* 7. commanding every man, *fully, truly, and effectually, to divide, ſet out, yield or pay all and ſingular Tithes and Offerings, according to the lawful Cuſtomes and Uſages of the Pariſhes and Places where ſuch Tithes or Duties ſhall grow, ariſe, come, or be due.* And remedy is given for Eccleſiaſtique Perſons before the Ordinary; and for Lay men, that claimed appropriated Tithes by grant from the Crown, in the ſecular Courts, by ſuch actions as uſually Lay-poſſeſſions had been ſubject to.

XXXIX, By the Acts of 27. *Hen.* 8. *cap.* 21. 37. *Hen* .8. *cap.* 12. and the Decree made upon them, the Citizens and Inhabitants of *London* and the Liberties were commanded to pay their Tithes to the Parſons, Vicars, and Curats of the City, according to a rate of the rents of their Houſes; that is, two ſhillings nine pence for every pound. And that if no rent be reſerved, the Tithe ſhould be duly paid, according to what

their Houſes had been laſt letten for. And according to that alſo, are owners bound to pay. But a Proviſo is in the Decree, That where a leſs ſumm then after two ſhillings nine pence the Pound hath been accuſtomed to be paid for Tithes, in ſuch places the former cuſtome ſhould be continued. And ſome other particulars are in it, which are too long to be here tranſcribed. you may eaſily ſee it whole. But anciently, in *London*, on every Sunday and other principal Feaſt day; the chief maintenance of the Miniſters was encreaſed, by a farthing offered out of every ten Shillings of Rent, *Ex Ordinatione antiqua*, ſayes *Lindwood* [m], (and that Ordinance, as I have heard, was either made by *Roger Nigar* Biſhop of *London*, in 13. *Hen.* 3. as a new one, or as a confirmation of former uſe, as which of theſe, I purpoſely abſtain here to enquire) *in dicta Civitate, tenentur ſingulis Dominicis diebus & in principalibus Feſtis & Sanctorum Apoſtolorum & aliorum quorum Vigiliæ jejunantur offerre pro ſingulis X. ſolidis redditus domus quam inhabitant unum quadrantem.* And the LII. farthings ſo yearly paid on Sundays only, came ſo neer to the juſt Tenth of the rent, that they were thought on as a Tithe paid; the other being reputed rather by the name only of Offerings. Which you may ſee in the ſame *Lindwood*; where he diſputes the queſtion, whether thoſe farthings excuſed the Citizens from perſonal Tithes of their gaines; and

[m] *In Conſtit. Provinc. tit de Dec. c. Sancta. §. Negotiatorum.*

and concludes, that they did not. But before these Acts and the Decree, no Tithes, as Tithes, were generally paid in that City; in some places [n] they were, as in the Liberty of St. *Martins le Grand*, which is rather in *London* then of it, neither can I but here remember that custom of the Eastern Church thus maintaind chiefly with Offering, or κανὸν κὰ, as they called them, which specially appears in the answer of *Theodore* [o] *Balsamon* Patriarch of *Antiochia*, to *Mark* Patriarch of *Alexandria*, touching the quantity of what was to be offered. He tells him, that no certain quantity is appointed by the Canons, and that through inequality of mens estates (none of them giving any such part to the Church as that it could discover their abilities) which permits not a regular certainty, they were contented with what custom and free bounty of the givers bestowed. ἐπεὶ δὲ (saies he) ἡ τῶν πραγμάτων ἀνωμαλία, καὶ ἔνδεια τμὴ τούτων ἐκάλυψεν ὑποτύπωσιν (πολλοστημόριον γὰρ τις αὐτῶν οὐ δίδωσι πρὸς ἐπίσκοπον) ἀρκούμεθα τῇ συνηθείᾳ καὶ προαιρέσει τῶν διδόντων; which is in substance the same before in *English*.

n Vide 16. *Ed.* 3. qnare impedit 147. *Ed.* 3. *fol.* 13. *a.* Grants case *in Report.* 11. *fol.* 16. 4.

o *In Respons.* 57. intermonimenta *Juris Graeco-Romani* edit. *à Leunclavio* & *Frethero.*

XL. In 2. and 3. *Ed.* 6. *chap.* 15. it was enacted that all predial Tithes should be thenceforth paid as of right they had been within forty years next preceding, or according to custom ought to have been, with allowance of Privileges lawful Prescriptions or Compositions, real and personal Tithes of gain by merchandise and artifice

artifice in ſuch places, and as within XL. years preceding they had been accuſtomably uſed to be paid, are commanded to be paid yearly at or before Eaſter. Other particulars and the remedies given by the Act may be eaſier found in it, then I can tranſcribe them.

XLI. To theſe may not amiſs be added thoſe Laws for Tithes, propoſed by the VIII. perſons choſen to begin a new body of Canon Law for *England* in 5. *Ed.* 6. according to the firſt purpoſe of the Statute of 25. *Hen.* 8. *cap.* 19. (which was ſeconded alſo by the Statute of 3, and 4. *Ed.* 6. *cap.* 11.) whereby XXXII. perſons aſſigned by the King ſhould have made it. Neither were thoſe VIII. to have given ſufficient autority to it according to thoſe Statutes, without approbation of XXXII. afterward that ſhould have cenſur'd their reformation. The VIII. were *Thomas Cranmer* Archbiſhop of *Canterbury*, *Thomas* Biſhop of *Ely*, *Richard Cox* the Kings Almoſner and *Peter Martyr* Doctors of Divinity, *William May* and *Rouland Tailor* Doctors of Law, and *John Lucas* and *Richard Gooderick* Eſquires. In what they propoſed, is found a conſtitution in the Kings name that all predial Tithes ſhould be paid in kind to the Miniſtery *integrè & expletè* (with an exception of timber Trees of XX. years growth) as alſo of the profits of Milles, of Turbaries, Cole-mines, Quarries of ſtone and all other of like kind. Of all Agiſtments alſo

alſo Tithes are there payable, and of the encreaſe of all kind of beaſts, wild and tame; of Fiſh, of Butter, Cheeſe, Milk, wooll, wax, and the Statute of 2. and 3. *Ed.* 6. for Tithes is there receiv'd for ſo much of it as is not againſt a general paiment which they would have had ordained. But theſe as the reſt in the Volume with them, were only intended for Laws, but never had ſufficient autority or confirmation. The intent was firſt that thoſe Canon Laws only, which according to the purpoſe of the two Statutes of *Hen.* 8. and *Ed.* 6. ſhould be compiled, might have authority in the Vniverſities, and force in practice; but ſo, that there might ſtill be *præſervatio legum noſtrarum communium in ſuo vigore remanentium*, as the words are in the Patent of *Ed.* 6. that authorizes the VIII. perſons to conſult about them.

For our Laws of Tithing either made or deſired, thus much. But before we ſpeak of the *Practice*, it is requiſite that we enter into ſome diſquiſition touching Pariſhes or Parochial right according whereto at this day from antient time the paiment of Tithes is regularly performed.

CAP. IX.

I. *Of* Pariſhes *in the Primitive Church of the* Britons.

II. Pariſhes *in the Primitive Church of the* Engliſh Saxons. *Firſt limited only in regard of the* Mi-

Miniſters function, *not of* Parochial profit. *All the* profits of every whole Dioceſe, *firſt made* a common treaſure *to be diſpoſed of by the Biſhop and his Clergy, of the ſame Dioceſe.* Reſidence *of the Biſhop and Clergy in thoſe times. The* great regard *then had to every* Clergy man.

III. *Of* diviſion of our Pariſhes. *Whether* Honorious *Archbiſhop of* Canterbury *firſt divided them.* Parochia *or* Paræcia *diverſly taken.*

IV. Lay-foundations *of* Pariſh Churches; *from whence chiefly came* Parochial limits *in regard of the profits receiv'd to the ſingular uſe of the Incumbents.* Limitation of Tithes *by* K. Edgar *to the* Mother Pariſh Church, *or* Monaſtery. Monaſteries *prefer'd before other* Churches *for burial.* Mortuaries. Mynrpe. a third part of Tithes (*according to* K. Edgars Law) *muſt be given to a new-built Church that had right of* Sepulture *by the Founder.* Sepultura *and* Baptiſterium. Capella Parochialis. *a* Pariſh *commanded to be made (out of another that was too large) by the Pope, one* Pariſh *joined to another by the King.*

IN conſideration of our *Pariſh Churches* and *Parochial limits*, the times of the *Britons* firſt, then of the *Engliſh-Saxons* and foreward are to be thought of, that is, the elder times of their Chriſtianity.

I. For

I. For the *Britons*; little or no Teſtimony of credit is extant that diſcovers the Eccleſiaſtical policy uſed by them, in their primitive times, or declares the poſſeſſions of their Hierarchy. And we omit here wholly what might be collected out of that fabulous tale of *Auguſtine* preaching at *Cometon* in *Oxfordſhire*, whereof more in the next Chapter. Although K. *Lucius* had inſtituted XXVIII. Biſhops, and III. Archbiſhops (as the *Britiſh* ſtory tells us) yet, how in thoſe Dioceſes any diſtinct Pariſhes were, appears not expreſly. But we may very well think that ſuch kind of Pariſhes only were in thoſe Biſhopricks as we have already * ſhew'd to have been in the Primitive Church elſewhere. Neither is it likely that in thoſe times, the cuſtom of this Iſland therein ſhould differ from what was even uniformly receiv'd through thoſe parts of Chriſtendom, whereof we have beſt teſtimony remaining. But if all ancient autority were of credit, Pariſh Churches expreſly mention'd of about the time of CCCCXC. and endowed as at this day might be found among the *Britons*. For when *Dubritius* was made Archbiſhop of *Southwales* which they called *Dextralis Britannia*, and his See appointed at *Landaff* under *Mouris* Prince of that *Wales*, divers Churches with their endowments of Tithes, Oblations, and other profits were appropriated to him and his ſucceſſors; " by the relation of an old Autor. Propter ſan-

* cap. 6. §. 3.

" Ætatem ſuam (*are his* [a] *words*) & prædicatio-
" nem præclaram Beati Paſtoris & regalem pa-
" rentelam ſuam plures Eccleſiæ cum ſuis dotibus, Decimis, oblationibus, ſepulturis, Territoriis & libera communione eorum datæ ſunt ſibi & ſucceſſoribus ſuis omnibus à Regibus & Principibus totius regni Dextralis Britanniæ. *And then*, Videns autem ſanctus Dubritius Largiſſuam potentum manum erga ſibi comiſſam Eccleſiam, partitus eſt diſcipulos " mittens quoſquam diſcipulorum ſuorum per " Eccleſias ſibi datas, & quaſdam fundavit Ecclеſias, & Epiſcopos per dextralem Britanniam coadjutores ſibi, ordinatis Parochiis ſuis, " conſecravit. But this Autor wrote not before about the beginning of the laſt CCCC. years from Chriſt, and ſpake of theſe things in the phraſe of his own time, the hand and context and their relations in him juſtifie it. He talks, you ſee, of Churches endow'd and appropriated and founded, as if he meant no other then ſuch as now are conveiable by Patrons and Ordinaries in the courſe of appropriations uſed in later ages, and filled with Incumbents that had in them like eſtates and particular intereſt in the profits as Parſons at this day; indeed, that in thoſe times Churches were built here, no doubt can be made; neither is it to be conceiv'd how [b] Chriſtianity could be in any Nation much ancienter (if generally receiv'd, or by any number) then Churches

[a] *Anonym. Ms. de primo ſtatu Landavenſ. Eccleſiæ* in Bibl. Cottoniana eadem in *Codice Landav.* qui *Tilo* dicitur habentur. Recens autem exſcriptus *Tilo* reperitur in eadem Biblioth.

[b] 1. *Ad Cor.* 12. 11. 12. Sed videſis *Iſidor. Peluſiot. lib.* 2. *Epiſt.* 246.

Churches or ſome covenient Houſes or other places in the nature of Churches, appointed for the exerciſe of devotion. And expreſs mention [c] is of a Church built here in the time of the *Romans*, to the honour of St. *Martin* in which *Auguſtine* and his followers when they came firſt from *Rome*, made their holy aſſemblies, and others alſo they repaired; and ſaies *Gildas*, of the Clergy of his time, that is about *D. LXXX. Eccleſiæ domus habentes, ſed turpis lucri gratia eas adeuntes.* But I gueſs, that under *Dubritius* few or no pariſh Churches were otherwiſe erected then for convenient places for ſuch Miniſters as the Biſhop out of his Clergy arbitrarily ſent thither, and that the offerings and other profits there receiv'd were to the common treaſury of the Dioceſe, and to be diſpenſed as before declared, where we ſpeak generally of thoſe elder times, and in regard no more certainty of the eſtabliſhing of the endowments, or places of reſidence in the *Britiſh* Hierarchy, may be found, I willingly permit to every man his own conjecture.

[c] *Beda Hiſt. Eccleſ. lib. 1. cap. 26.*

II. For the age of the *Saxons*; we read that *Auguſtine* and his company, when they firſt came to K. *Ethelbert* in *Kent*, began there to imitate [d] *Apoſtolicam primitivæ Eccleſiæ vitam, ea tantum quæ victui neceſſaria videbantur ab eis quas docebant accipiendo*, and, that after they had converted the King, they builded and repaired Churches, *majorem prædicandi per omnia, & Eccleſias*

[d] *Beda lib. 1. cap. 26.*

fabricandi vel reſtaurandi licentiam accipiebant. So *Ethelbert* in his Charter of foundation (if you will believe the autority * whence we have it) of his Abbey in *Canterbury*, talks of *alias quas fabricavi Eccleſias*, And doubtleſs thoſe Churches which they built, or repaired, as alſo the Temples of the Gentiles which by adviſe of Pope *Gregory* to *Mellitus* were not to be deſtroied, but converted to Chriſtian ſervice, had ſome kind of limits of adjoining Villages or Towns, and ſo were in that reſpect Parochial. But thoſe limits and Churches were variouſly choſen, and aſſigned no miniſtring Prieſts, according to the convenience of the aſſembling of the Neighbour-inhabitants; but not ſo ordain'd that every Pariſhioner was bound to keep his devotion within the limits of this or that pariſh-church; that is, Pariſhes were then limited only in regard of the miniſtring Presbitery (whence they were called περιοδοι *i.* circuits, within which the Prieſts exerciſed their ſhriving) but not in regard of the profits receiv'd from the Pariſhioners. For the whole Dioceſe (firſt of *Canterbury*, then of the other elder Biſhopricks, as they were inſtituted) was indeed the only limited Pariſh, in regard of the Pariſhioners profits, and the Clergy of the Biſhop, that is, his family of Churchmen, were the Curates in inferior Churches, according as the Biſhop appointed and altered them; and whatſoever they received through devotion

* Can. Apoſt. l. 8. inter Londin.

devotion of good Christians, made up a common treasure for the whole Diocese (whence it followed, that it was not material at what Church any Parishioner offered his Christian bounty, so he did it within the Diocese) which was both consonant to what is found to be the use of other Churches in the Primitive times, and is also confirmed by that *Augustin* in his question to Pope *Gregorie*, touching Bishops. He demanded *qualiter cum suis Clericis conversantur? vel de his quæ fidelium oblationibus accedunt Altari, quantæ debeant fieri portiones?* whereto the Pope answers that the custom is generally to make a quadripartit division for the Bishop, for his Clergy, for the Poor, and for reparation of Churches. But he admonishes him, that in the tenderness of the *English-Saxon* Church, he and his Clergy should still imitate the community of all things used in the Primitive times under the Apostles. The *Saxon* of that question is observable. Ꝼꞃeꞅꞇ be Biꞅceopum; hu hie mid hiopa ȝeꝼeꞃum ꝺꞃohꞇian ⁊ luꝼian ꞅcẏlen. Oꝺꝺe in þæm lacum ȝeleaꝼꞅumꞃa þe hie ꞇo ꝼeoꝼoꝺum, ⁊ ꞇo ȝoꝺeꞅ cẏꞃicum bꞃenȝaꝺ, hu monȝe ꝺæꞅaꞅ þaꞃa beon ꞅcẏle, that is, *first concerning Bishops. How they should bear themselves among their Clergy, or how many parts they shall have in the Offerings that good Christians brought to Altars and to Gods Churches.* Here it is more plainly exprest, that whatever came to any Altar or Church, within the Diocese,

f Extat *in Beda* exemplaris Laxonici *Ms. lib.* 3. *in* Bibl. Cottoniana.

Dioceſe, was one common profit to be divided or emploied, as Pope *Gregorie* anſwers; where he tells him alſo that the Biſhop and his Clergy must live together, *Sed*, ſaith he, *quia fraternitas tua Monaſterii regulis erudita, ſeorſum vivere non debet à Clericis ſuis in Eccleſia Anglorum &c.* So that you may collect that in theſe Primitive times of the *Engliſh-Saxon* Church the Biſhop and the whole Clergy of the Dioceſe were as one body living upon their endowments (beſtowed on the Biſhoprique) and their treaſure that came from the ſundry places of Devotion whither ſome one or other of them at the Biſhops appointment, was ſent to preach the Word and miniſter the Sacraments, every Clerk having his dividend for his maintenance. Neither in theſe elder times, I think, did any of theſe of his Clergy or Chaplains uſually reſide elſewhere then with him at his Biſhoprique (as Deanes and Chapters at this day) or in ſome Monaſteries whence they might as occaſion required, at certain times go into thoſe Pariſhes which were diſtinguiſhed only for ſeveral functions of thoſe Chaplains, leſt want of ſuch diſtinction might the ſooner have cauſed alſo a want of ſpecial diſcharge of this or that Cure. So that there were *ſingularum Eccleſiarum Presbyteri* [h] *qui populum erudire debent*, and they were particularly ordained for the Title of this or that Church, and every one was bound by our Canons of that time not

[g] Videſis Bedam Hiſt. Eccleſ. lib. 4. cap. 27.

[h] Synod. Anglic. c. 1. & 6. an. 786. Conſtit. 8. cap. 9.

not to leave the Church for which he was ſo ordained. And from their reſidence which the Biſhop, or out of the Pariſh in Monaſteries, came it, as it ſeems, that they were but rarely ſeen abroad among the people. For ſo rarely were they ſeen abroad, that when ever any of them were eſpied in the Countrey, the people uſed preſently to flock about him, and with all reverence humbly to beſeech his Beniſons, either by ſigning them with the Croſs, or in holy Prayers for them; and with all earneſtneſs of attention, they heard what he preached. This is that * which *Bede* teaches, when he tells us, that *ſi quis Sacerdotum in vicum forte deveniret, mox congregati in unum vicani, verbum vita ab illo expetere curabant.* And again, *Erat quippe moris eo tempore populis Anglorum, ut, veniente in villam Clerico vel Presbytero, cuncti ad ejus imperium verbum auditurî confluerent, libenter ea quæ dicerentur audirent, libentiùs ea, quæ audire & intelligere poterant, operando ſequerentur.* How long this communitie in every Dioceſe between the Biſhop and his attending Clergy (which is denoted often by the name of *Epiſcopi Clerus*) continued, fully appears not. But, that it was not out of uſe till paſt more then C. years after *Auguſtines* coming, that is, till paſt D. CC. years from Chriſt, may be conjectured out of thoſe teſtimonies of *Bede*, which extend as far.

* Vide eum. *hiſt. Eccleſ. lib* 2. c. 26. & *lib.* 4. c. 27.

III. Yet it is commonly received, that *Honorius*,

norius, the first Archbishop of *Canterburie* after *Augustine*, about the year D. C. XXX. first divided his Province into Parishes. And in the late history of the Archbishops of *Canterburie*, written by Mr. *Foscelin*, it is thus delivered of him. *Neque solùm Episcopos tanquam superiores turrium custodes Ecclesiæ superimposuit, sed etiam, Provinciam suam primus in Parochias dividens, inferiores Ministros ordinavit.* And according to this, have some of our greatest and most learned Writers related. But I doubt much how it can at all stand with truth. For if *Parochiæ* be here meant only for such as were assigned Limits for those which were sent arbitrarily from the Bishop, out of the number of his Chaplains, or his *Clerus*, residing for the most part, in those elder times, with him at his Bishoprique; then cleerely, *Honorius* was not the first that made division of them. Such kind of *Parochiæ* are even neer as ancient as Bishopriques; and questionless in *Augustines* time, how could otherwise, Gods Service be orderly had in the Infancy of the Church? And when ever several Churches for Christian Service, or other places for holy Assemblies, began, then began such *Parochiæ*. And that Churches were built here before *Honorius* his time, is before manifested. If, on the other side, *Parochiæ* be taken for what it's usually understood, that is, for such Limits as now make Parishes, bounded as well in regard of the profits re-

received from the Pariſhioners (due only to the Miniſter of the Church) as of the Incumbents function and reſidence; how will that ſtand with the communitie of Eccleſiaſtique profits, and the Biſhops and his Clergies living together, that may be without much difficulty diſcovered out of *Bede*, to have continued after *Honorius* alſo? But where ever that Teſtimony of his dividing Pariſhes was firſt found, I doubt it was miſ-underſtood, through the various ſignification of *Parochia*. For in thoſe antient times, *Parochia* uſually denoted as well a Biſhoprique, or Dioceſe, or biꝛceope ꝛcýpe, as the *Saxons* called it, as a leſs Pariſh. That ſignification is very obvious in the old Councels of both Tongues (as it is alſo ſpecially obſerved by the learned *Fileſacus* in his *Paræcia*) and in the monuments of this Kingdom. For it is related of King *Genvalch*, that he divided [i] *Provinciam in duas Parochias*, when he made a new Biſhoprique at *Wincheſter*, that was taken out of the Dioceſe of *Dorcheſter*. And in the Councel of *Hertford*, held under *Theodore* Archbiſhop of *Canterburie*, one Canon is [k], *Ut nullus Epiſcoporum Parochiam alterius invadat ſed contentus ſit gubernatione creditæ ſibi plebis*. So in *Florence* of *Worceſter*, under the year D. C. LXXX. *Merciorum Provincia in quinque Parochias eſt diviſa*, that is, into five Biſhopriques. And the truth is, that it may be ſaid properly enough, that *Honorius* was the

i Beda Hiſt. Eccleſ. lib. 3. cap. 7.

k Ibidem lib. 4. c. 5. & Videſis c. 16. 42. c. 5. ſanè:

firſt under whom his Province was divided into ſuch *Parochiæ*, or Biſhopriques. That is, no other Biſhopriques (except *Canterburie*, *London*, and *Rocheſter*) were in his Province untill his time; thoſe three being almoſt of one antiquity. But under him, *Byrinus* ws made firſt Biſhop of the *Weſt-Saxons*, and had his See or Bircop ſetle (as they called it) at *Dorcheſter*, and *Fælix* the *Burgugnone* was likewiſe ordained firſt Biſhop of the *Eaſt-Angles* at *Dunwich*. Which two Ordinations, in regard the like had not been in this Province of *Canterburie* from *Auguſtines* time till this *Honorius*, were perhaps the cauſe why it might be related, that *Honorius primus Provinciam ſuam in Parochias diviſit*. Which, although it were to be conceived of ſuch Pariſhes as at this day we call by that name, yet could not extend to all his Province. For not till long after his time, was Chriſtianity received in the Kingdom of *Suſſex*, which was firſt converted by *Wilfrid*, firſt Biſhop of *Selſey*, in the year D. C. L X X I X. Hitherto then, for ought can out of ancient Monuments be proved, no Limits Parochial, in regard of the Profits to be received from the Pariſhioners, and ſpent by this or that Miniſter only, were aſſigned. But the ancient courſe of a kind of community of all profits of the Dioceſe, with the Biſhop and his Clergy, remained ſtill in uſe. Neither was the intereſt of many Churches, it ſeems, as yet here in any Lay-

founders.

founders. But the Bishops, as I think, had both the interest and governance of the Churches built by the King, and took care for building new in their own endowments, and hallowing old ones, that had been either prophaned since Christian Service used in them among the *Britons*, or formerly consecrated only to Heathenisme. So may you understand that of *Byrinus*, first Bishop of *Dorchester*. *Factis dedicatisque Ecclesiis Multisque ad Dominum, pro ejus labore, populis advocatis, migravit ad Dominum*, as *Bedes* words are; in the *Saxon* of which it is exprest, that the Cipicean poplite ⁊ gehalgode, that is, *made Churches, and hallowed them.*

IV. But afterward, when devotion grew firmer, and most Lay-men, of faire estate, desired the Countrey-residence of some Chaplains, that might be always ready for Christian instruction among them, their Families, and adjoyning Tenants; Oratories and Churches began to be built by them also: and being hallowed by the Bishops, were endowed with peculiar maintenance from the Founders, for the Incumbents that should there only reside. Which maintenance, with all other Ecclesiastique profits that came to the hands of every such several Incumbent (in regard, that now the Lay-founder had, according to the Territory of his Demesnes, Tenancies, or neighbouring Possessions, made and assigned both the Limits within which

the holy Function was to be exerciſed, and appointed the perſons that ſhould repaire to the Church, and offer there, as alſo provided a ſpecial Salarie for the performance) was afterward alſo reſtrain'd from that common Treaſurie of the Dioceſe, and made the only revenue, which became perpetually annexed to the Church of that Clerk who received it. Neither was it a wonder, that the Biſhops ſhould give way to ſuch reſtraint. For had they denied that to Lay-founders, they had given no ſmall cauſe alſo of reſtraining their devotion. Every man, queſtionleſs, would have been the unwillinger to have ſpecially endowed the Church, founded for the holy uſe chiefly of him, his Family, and Tenants, if withal he might not have had the liberty to have given his Incumbent, there reſident, a ſpecial and ſeveral maintenance; which could not have been, had the former community of the Clergies revenue ſtill remained. Out of theſe Lay-foundations chiefly, doubtleſs came thoſe kind of Pariſhes, which at this day are in every Dioceſe. Their differences in quantity being originally out of the difference of the ſeveral Circuits of the Demeſnes or Territories poſſeſſed by the Founders. And after ſuch time as upon Lay-foundations, Churches had their profits ſo limited to their Incumbents, no doubt can be; but that the Biſhops, in their Prebends, or Advowſons of Pariſhes, both in Cities and in the Coun-

Countrey, formerly limited only in regard of the Miniſters Function, reſtrain'd alſo the profits of every of their ſeveral Churches, to the Incumbents; that ſo a uniformity might be received in that innovation of Parochial right. At what time theſe Lay-foundations began to be frequent, plainly enough appears not. But ſome mention is of them about the year D. C C. as you may ſee in [m] *Bede*, where he ſpeaks of one *Puch*, a *Saxon* Noble-Man, that had built a Church, and entreated *John*, Biſhop of *Hangulſtad*, to conſecrate it; and the like alſo of one *Addi*. *Alio item tempore*, ſays he, *vocatus ad dedicandum Eccleſiam Comitis vocabulo Addi*. Some ſuch more, of about that time, may be found. But about the year D. C C C. many Churches, founded by Laymen, are recorded to have been appropriated to the Abbey of *Crowland*, as you ſee in the Charters of Confirmation made by *Bertulph* King of *Mercland*, and of others, to the ſame Abbey, reported by *Ingulphus*; Whence it may be obſerved, that by this time Lay-foundations were grown very common, and Parochial Limits alſo of the Pariſhioners devotions. And in a Counſel held in D. C C C. X V I. under *Wilfrid*, Archbiſhop of *Canterburie*, we find, *Vbi Eccleſiæ ædificentur, à propriæ Dioceſis Epiſcopo ſanctificentur*. And a Canon of the [u] ſame Synod ordains, That upon the death of every Biſhop, *Statim per ſingulas*

[m] *Hiſt. Eccl. lib. 5. cap. 4. & 5.*

[u] *Mſ. (in Bibl. Cottoniana) t. 10.*

gulas Parochias in singulis quibusque Ecclesiis, pulsato signo, omnis famulorum Dei cætus ad Basilicam conveniat, Ibique paritèr XXX. *Psalmos pro defuncti anima decantent, & posteà unusquisque antistes & Abbas* D C. *Psalterios &* CXX. *Missas celebrare faciat, & tres homines liberet, & eorum cuilibet tres solidos distribuat &c.* with other Ceremonies of Fasting and Prayer (according to the time) for the soul of the Bishop. Here, it may seem, Parishes limited as at this day, are understood. But the first express mention of limitation of profits (other then of the endowing) to be given to this or that Church, is in those Laws of King *Edgar*, made about D. CCCC. LXX. where a three-fold division is of Churches. The first is called Ealban Mynſtre, that is, *Senior Ecclesiæ*, which * name anciently was given to Cathedral Churches; the second, a Church that hath Legerſtore, or place for Burial; the third, a Church that hath no Legrſetore. Where it is ordained, that every man having not erected a Church of his own, should pay his Tithes to the Ealban Mynſtre ge ſeo hyrneſſe to hyrþ; that is, *to the ancientest Church or Monastery where he hears Gods service.* Which I understand not otherwise, then of any Church or Monastery, whither usually in respect of his Commorancy or his Parish (determined according to the Farmes, Houses and Lands, occupied with those Houses or Farms) he repair-

Leg. Francis. apud Filesacum, lib. de Parœcia.

ed,

paired; that is, his Pariſh Church or Monaſtery. For we muſt remember, that in thoſe times, Monaſteries (which ſomewhat before *Edgar* [o] were for the moſt part filled with ſecular Clerks, who alſo, as other Clergy-men took pains abroad in the ſpiritual Harveſt; and under him by Archbiſhop *Dunſtans* procurement were reſtored only to Cloiſter Monks or *Benedictines*) aſwel as other Churches erected either by Biſhops or Lay-men, were in many places the only Oratories and Auditories that the neer Inhabitants did their dovotions in, and perhaps were in regard of burial moſt commonly prefer'd before other Churches whatſoever. which may be collected from a Canon of an [p] old Synod of *Ireland* held about theſe elder times of the *Engliſh* Church. Neither is it likely but that the manners of theſe Northern Churches in that age were enough agreeable to each other. In that Synod it appears that any man might have bequeathed his burial to what Abbey beſt pleaſed him, and that the Abbot to whoſe Monaſtery the bequeaſt was made, ſhould have the Apparel of the dead, his Horſe and his Cow for a Mortuary, although he had before ſolemnly given all that he had to any other Abbot. whence may eaſily be conjectured that Monaſteries were in chiefeſt reputation for [q] burial, and had a right of it before any other kind of Parochial Church, if the dead made choice of any of them, and by the way for that

[o] *Regular. concordia Anglica Nationis Monach. Sanctimonialiumque* Ms. in Bibl. Coton. & *Malmeſbur. lib. 1. de geſt. Pontific. fol.* 115.

[p] *In Statut. Synod. Ms. in ſup. dict. Biblioth. cap. 9.*

[q] Videſis. 26. quæſt. 1. c. 13. Agapitus & 13. q 2. c. 6. ubicunque. ſed vide *Append. ad Concil. Later. part.* 43 *cap.* 4.

that courſe of paiment of mortuarie (which the *Saxons*, I think call'd ꝛaꝛꝛceaꝛ) the ſame Synod affirms, that *Omne corpus ſepultum habet in jure ſuo Vaccam & Equum & Veſtimentum & Ornamentum ſui Lecti; nec quicquam horum reddetur in alia debita, qua corpori ejus tanquam vernacula debentur.* And although the certain age of that Synod appears not, yet it was after ſuch time as Pariſhes were limited in regard of the Pariſhioners repairing to one certain Church and giving their devotions there only, for in it alſo are theſe words: *quicunque diſceſſerit de ſua Eccleſia & in aliâ Eccleſia ſepultus fuerit &c.* what can *ſua Eccleſia* be but ſuch a kind of Pariſh Church, as at this day is titled ſo? that is, one limited in regard of the Pariſhioners and their profits received from them. But, in that of *Edgars* ealden ꝑynꝛꝛe, it is plain that although ꝑynꝛꝛꝛe ſpecially denote a Monaſtery, yet all other Pariſh Mother Churches are underſtood by it, and indeed cyꝛic and ꝑynꝛꝛe are frequent, as Synonomies in the *Saxon* monuments. But as the firſt part of his Law that gives all Tithes to the Mother Church of every Pariſh, meant in them a Parochial rights to Incumbents, ſo alſo the ſecond part, that permits a third portion of the Founders Tithes to be ſettled in a Church new built, whereto the right of Sepulture is annexed, makes a diſpenſation for a Pariſhioner that would build ſuch a Church in his Boclands or land poſſeſſed

f *Vide Canut. Leg. cap. 13.*

poſſeſſed *optimo jure*, or as inheritance derived from a Charter of feoffment. And however that ſecond part alſo of this Law, is iterated by King *Knout*, yet I doubt not but that ſuch new erections within old Pariſhes bred alſo new diviſions which afterwards became whole Pariſhes, and by connivence of the time, took (for ſo much as was in the Territory of that Boclan) the former Parochial right that the elder and Mother Church was poſſeſſed of. For, that right of Sepulture or having a Kgeneop, was, and regularly is a Character of a Pariſh Church or *Eccleſia*, as it is commonly diſtinguiſhed from *Capelli*: and anciently if a *quare impedit* had been brought for a Church, whereas the defendant pretended it to be a Chappel only, the iſſue was not ſo much whether it were Church or Chappel, as whether it had *Baptiſterium* or *Sepulturam*, or no; ſo it appears in a caſe of r 23 *Hen.* 3. where *William* of *Whitanſton* in his Count againſt the Archbiſhop of *Canterbury*, expreſſes, *Eccleſiam de Hey* in *Suſſex* to be of his Advowſon, and the Archbiſhop pleads that what he calls a Church, *non eſt Eccleſia, imo Capella pertinens ad matricem Eccleſiam de Terringes, ita quod non eſt ibi Baptiſterium neque Sepultura, imo omnes qui naſcuntur ibidem baptizantur apud Terringes, & ſimiliter omnes qui ibi moriuntur, ſepeliuntur apud Terringes &c.* and thence was it alſo that the whole Clergy of *England* put the inquiry of ſuch an

r *Trinit. Placit. 23 Hen. 3. rot. 15 in arce Londinenſi.*

issue among their grievances, when in 21 *Hen.* 3. they desired *Otho* the Popes Legate, among other freedomes, to get for them of the King, *Quod s judices seculares non decidant causas Ecclesiasticas in foro seculari, nec tales homines determinent utrum talis Capella debeat habere Baptisterium & Sepulturam an non.* For, if it had the right of administration of Sacraments in it and Sepulture also, then differ'd it not from a Parish Church, but might be stiled *Capella Parochialis*, by which *t* name some Chapels are with us known; and in the *Saxon* times also we find *Cæmeterium* u *Capellæ*, for the burial place of a Chapel, which must be understood of a Church that had the like right as that which is mention'd in the second part of *Edgars* Law: and those other Churches which in his and K. *Knouts* Laws are spoken of, that is, Churches without burial places, pelocypican, or *field-Churches*, are only what at this day we call Chapels of ease, built and consecrated for Oratories, but not diminishing any thing of the Mother Churches profits. But also besides those original Lay-foundations, some Parishes have had other beginnings since from alterations made in regard of the inconvenience of their former limits. And this by direction or authority both from the Pope, or Bishops, according as they saw occasion exacted; and from the King For the Pope; we may see in the example remaining in the Decretals *x*, where Pope *Alexander*

s In *Annal. Ms. Monasterii Burtonensis, sub anno* 1237. apud V. C. Tho. Allen. Oxon.

t *Lindwood in tit. de Censibus: quamvis Lex naturæ, verb. una Ecclesia. & in tit. de celebr. Miss. c. effrenata.* & vide *Bract. fol.* 241. *b.* & *Flet. lib.* 5. *cap.* 14. & *Breton fol.* 226. *b.* u *Ingulphus fol.* 489. *b.*

x *Extr. tit. de Eccles. ædificand. c.* 3. *ad audientiam.*

ander the third ſends his Decree to the Archbiſhop of *York*, reciting that in a complaint made to him, he had heard that a certain Town in his Province was ſo diſtant from the Pariſh Church, that it was very difficult for the Inhabitants to repair thither, eſpecially in winter, and withal that the Church revenue of the Pariſh (although that Town were exempted) was not inſufficient for the Miniſter of the Mother Church, wherefore he commands the Archbiſhop to build in that Town a Church, and with aſſent of the Founder of the Mother Church, to inſtitute at the Preſentation of the Rector an Incumbent there, that might have to his own uſe all Eccleſiaſtique profits encreaſing in the limits of the ſame Town, and ſo acknowledge a ſuperiority to the Mother Church, and that he ſhould do it alſo whether the Rector of the Mother Church would aſſent or not. For the King; an old *y* example is in 13 *Hen.* 3. where becauſe the Church of S. *Peters* in *Chicheſter* was very poor, and that only two Pariſhioners were in it, the King at requeſt of *Ralf Nevill* then Biſhop there and Chancellour of *England*, grants, *quod eadem Eccleſia demoliatur & prædicti duo Parochiani qui ſpectabant ad ipſam aſſignentur imperpetuum Hoſpitali S. Mariæ, quod eidem Eccleſiæ eſt vicinum, ut ibi deinceps percipiant ſpiritualia & ſint Parochiani ejuſdem Hoſpitalis.* And ſuch like commands, occaſions, and conveniences, doubtleſs have al-

y Pat. 13 *Hen.* 3. *part.* 1. *membr.* 7.

ter'd and made the limits of divers Parishes every where, both in the Country and Cities, which have to this day many of small Territory, but of large number of Communicants. For Parochial limits, thus much.

CAP. X.

I. *The* Practice *of* Tithing. *Of* K. Cedwalla's *Tithing, being no Christian: the custom of the* German-Saxons, *in sacrificing their* tenth *captive to* Neptune. Decima *used for a less part also in ancient monuments.*

II. *The* Practice *of* Tithing *in the* Christian *times of our Ancestors: the tale of* Augustin *and the Lord of* Cometon *touching non-payment of them: the* Tithe *of every dying Bishops substance to be given to the poor, by an old Provincial Synod.* Tithes *how mention'd in* Domesday. *Testimonies of payment of them.* Henry *the thirds grant of the payment of* tithe *of Hay and Mills out of all his demesnes. The beginning of Parochial payment of* Tithes *in common and established practice in* England. *How that common assertion; that every man might have disposed his tithes at his pleasure, before the Council of* Lateran, *is true and to be understood.*

THe *Laws* of this Kingdom for payment of Tithes, and the original of *Parochial right* to profits accruing within the limits

limits of every Pariſh Church (which were, after Lay foundations grew common, diſtinguiſhed according to the adjacent poſſeſſions and tenancies of the Founders, and their Farms, Mannors, Towns, and the like) being hitherto declared; the *Practice* of the times remains to be alſo diſcovered.

I. In that, ſomething alſo is obſervable among the Ancients of this Kingdom of a kind of Tithing, related to have been where Chriſtianity was not yet received. Some of them tell us of *Cedwalla* King of the *Weſt-Saxons*, that before his being made Chriſtian (about the year DC. LXXXVI.) he tithed all his ſpoils of War to the Deity. So the Monk of *Malmesbury*. *Arduum memoratu eſt*, ſaith he, *quantum etiam ante baptiſmum inſerviret pietati, ut omnes manubias, quas jure prædatorio in ſuos uſus tranſcripſerat, Deo decimaret:* neither, if he did ſo, was it without ſome example of his Anceſtors the *German-Saxons*, (whence *England* was chiefly filled) who were wont to ſacrifice to *Neptune* (I think) the Tenth of all captives taken in their piracies and incurſions made by Sea upon the *Gauls* ſpecially: ſo ſays my Author, that liv'd about the time of the *German-Saxons* firſt arrival here: his *a* words, of them are. *Prætereà priuſquàm de continenti in patriam vela laxantes, hoſtico mordaces anchoras vado vellant, mos eſt remeaturis Decimum quenque captorum per æquales*

[a] *Sidon. Apollinaris lib. 8. Epiſt. 6.*

& cruciarias pœnas, plus ob hoc triſti quod ſuperſtitioſo ritu, necare ſuperque collectam turbam perituroru mortis iniquitatem ſortis æquitate diſpergere. Talibus ſe ligant votis, victimis ſolvunt: & per hujuſmodi non tam ſacrificia purgati quam ſacrilegia polluti, religioſum putant cædis infauſtæ perpetratores, de capite captivo magis exigere tormenta quam pretia. Neither, I think, is any other expreſs mention of this their Tithing, among ancient monuments: and, for that their ſacrificing to *Neptune*; indeed the Author *Apollinaris* here mentions him not: but, it being done at Sea and *per æquales* (for ſo is the true reading, although ſome there read *æquales pœnas*) you may well conjecture it was to *Neptune* or to their ſuppoſed Deity of the Sea: and thus the moſt learned and noble *Monſieur Savaron* in his notes upon *Apollinaris*, expreſly alſo makes it a ſacrifice to *Neptune*: and although it be true that among their gods we find none nam'd, that is denoted to anſwer to *Neptune*, yet, that ſome Deity of the ſame nature, that is ſome great Sea-god was in their ſuperſtitions, may be eaſily collected not only from this relation of their cruel devotions, but alſo from their wondrous and accurate obſervation of the ebbs and floods (called by them *Ledons* and *Malins*) which were the *b* chief Directors of their account of times, as the Sun and Moons motion hath ever been to other Nations: which doubtleſs was no ſmall cauſe that the

b Videſis *Joſeph. Scalig. de Emendat. Temp. lib. 2. & lib. 1. de Mirabilibus S. Scripturæ D. Auguſtino falsò aſcriptum, &c.*

the Sea was to them reputed a Deity, as the Sun and Moon alſo, before other Creatures, in the ancient Theology of the *Gentiles*. But for that of *Cedvalla*; let it be upon *Malmesburies* credit, that he tithed his ſpoyls. *Bede*, who might better have known it than *Malmesbury* could, relates no ſuch thing of him. He ſays only, that when he conquer'd the Iſle of *Wight*, according to a vow that he made to the Deity, he gave for the Lords uſe, the fourth part of the Iſle (that is, C C C. Hides or Plough lands of M. C C.) and of his Martial gains, to *Wilfrid*, Archbiſhop of *York*, then being in thoſe parts in baniſhment, and Biſhop of *Seſeley*. And *c Fridegod*, that in the *Saxon* times wrote the life of *Wilfrid* in Verſe, ſays hereof only by Apoſtrophe to *Cedwalla*,

Tu quoque Pontificem multâ tellure beâſti,

and mentions no more in particular. That which in the Latin *Bede*, in this ſtory, is called *Familia*, is hyd in the *Saxon*. And perhaps only ſuch a kind of giving a fourth, or any part, upon vow to the Lord, was in that paſſage of *Malmesbury* underſtood for Tithing. Why might it not, as well as the four Thraves of Corn of every Plough-land, in the Eaſt-riding of *York*, given by King *Athelſtan* to the Church of S. *John* of *Beverley* (which came, on the other ſide, not near to the Tenth) are ſtiled *Decimæ* in a Bull of one of the Pope *Gregories* (I think the ninth) which

c *Ms. in Bibl. Cotton.* de quo *apud Malmesbur. lib.* 1. *de geſt. Pontif. fol.* 114. *a.*

which I have seen transcribed. As if *Decimæ* in one notion had signified any kind of revenue, devoutly offered to holy uses: as, upon other reason, δεκατεύειν denotes also καθιερῶν among the *Greeks*. Those four Thraves of every Hough-land were, before that Grant, payable into the Kings Avenary *d* by custome of the Countrey. And in *Athelstans* Charter (as I *e* found it transcribed) they were thus exprest,

d Fulcardus Dorobernens. de vit. & mirac. J. de Beverlaco recens Ms. in Bibl. Cotton.
e Ms. in eadem Biblioth.

ða ꝼoꝼne ðꝼaue by heuen cyng
Oꝼ ilc a p'ou oꝼ Eꝼeꝼeꝺing.

And for that more general notion of *Decima* or *Decimatio*, I have seen the transcript of a Deed made *f* by *Robert de Hesel* to the Monastery of *Giseburne* in *Yorkshire*, wherein he gives *duas garbas de tota terra quam de novo colui in Territorio de* Hesel *postquam illam tenui aut quam ego de cætero colam vel hæredes mei, ita ut Decimatio hæc cedat in fabricationem Ecclesiæ novæ de* Giseburne. Here the gift of two Sheaves is called *Decimatio*.

f Chartular. Ms. Monasterii de Giseburne in dict. bib.

II. For the practice of payment among Christians, both *Britons* and *Saxons*; might we believe the common tale of that *Augustine*, the first Archbishop of *Canterbury* Province, his coming to *Cometon* in *Oxfordshire*, and doing a most strange miracle there; touching the establishing of the Doctrine of due payment of Tithes, we should have as certain and express auto-

autority for the antient practice of ſuch payment, as any other Church in *Chriſtendome* can produce. But as the tale is, you ſhall have it, and then cenſure it. About the year (they ſay) D C. *Auguſtine* coming to preach at *Cometon*, the Prieſt of the place makes complaint to him, that the Lord of the Mannor having been often admoniſhed by him, would yet pay him no Tithes. *Auguſtine* queſtioning the Lord about that default in devotion; he ſtoutly anſwered, That the tenth Sheaf doubtleſs was his that had intereſt in the nine, and therefore would pay none. Preſently *Auguſtine* denounces him excommunicate, and turning to the Altar to ſay Maſs, publiquely forbad, that any excommunicate perſon ſhould be preſent at it, when ſuddenly, a dead Corpſe, that had been buried at the Church door, aroſe (pardon me for relating it) and departed out of the limits of the Churchyard, ſtanding ſtill without, while the Maſs continued. Which ended, *Auguſtine* comes to this living dead, and charges him in the name of the Lord God to declare who he was. He tells him, that in the time of the *Britiſh* State he was *hujus villæ Patronus*, and although he had been often urged by the Doctrine of the Prieſt to pay his Tithes, yet he never could be brought to it; for which he died, he ſayes, excommunicate, and was carried to Hell. *Auguſtine* deſired to know where the Prieſt that excommunicated him, was

buried: this dead ſhewed him the place; where he makes an invocation of the dead Prieſt, and bids him ariſe alſo, becauſe they wanted his help. The Prieſt riſes. *Auguſtine* asks him, if he knew that other that was riſen: he tells him, yes; but wiſhes he had never known him: for (ſaith he) he was in all things ever adverſe to the Church, a detainer of his Tithes, and a great ſinner to his death, and therefore I excommunicated him. But *Auguſtine* publickly declares, that it was fit mercy ſhould be uſed towards him, and that he had ſuffer'd long in Hell for his offence (you muſt ſuppoſe, I think, the Autor meant Purgatory) wherefore he gives him abſolution, and ſends him to his grave, where he fell again into duſt and aſhes. He gone, the Prieſt new riſen, tells, that his Corpſe had lien there above C. L X X. years; and *Auguſtine* would gladly have had him continue upon earth again, for inſtruction of Souls, but could not thereto intreat him. So he alſo returns to his former lodging. The Lord of the Town ſtanding by all this while, and trembling, was now demanded, if he would pay his Tithes; but he preſently fell down at *Auguſtines* feet, weeping and confeſſing his offence; and receiving pardon, became all his life time a follower of *Auguſtine*. Had this Legend truth in it, who could doubt, but that payment of Tithes was in practice in the Infancy of the *Britiſh* Church? The Prieſt that roſe here from the dead,

dead, liv'd (if he ever liv'd) about CCC. XXX. after Chriſt, and would not ſurely have ſo taxed the Lord of this Mannor only, if the payment had not been uſually among other good Chriſtians here, not taught only, but performed alſo. Neither need I admoniſh much of the autority of it: the whole courſe of it directs you how to ſmell out the original. Beſide the common Legend of our Saints, it is in ſome Volumes put alone, for a moſt obſervable Monument: and I found it bound up at the end of the Ms. life of *Thomas Becket*, Archbiſhop of *Canterbury*, written by *John de Grandiſono*, and it remains in the publick Library of *Oxford*. There alſo you have it related in *Joannes Anglicus* [g] his *Hiſtoria Aurea*, and in the Margin, are noted to it theſe words: *Hoc miraculum videbitur illis incredibile qui credunt aliquid Deo eſſe impoſſibile: ſed nulli dubium eſt quod nunquam Anglorum duræ cervices Chriſti jugo ſe ſubmiſiſſent niſi per magna miracula ſibi divinitus oſtenſa.* But let the truth be as it will, I do not believe, that the fable can be found, nor any ſteps of it, above CCCC. year old at moſt. But, to leave ſuch teſtimony, no doubt can be, but that ſome practice of payment was here uſed very antiently, which (beſide the devotion to be ſuppoſed in Chriſtians, and the Doctrine of antient Fathers, which, very likely, wrought here as in other Weſtern Churches) might be collected, by good probability,

[g] *Ms. part.* 2. *lib.* 17. *cap.* 72.

our of thoſe Laws alone of the *Saxon* times, which queſtionleſs were not without ſome effect, being ſo often renew'd. Neither is the memory of ſome uſe of payment here, in theſe more elder times, omitted in the reliques of antiquity. In the Ms. life *h* of the *Britiſh* Saint *Cadoc*, among ſome Laws of his Church of *Lhancarvan*, which ſeem to be attributed to his time (which falls about our *Auguſtine* or before) one is, *Quicunque decimaverit, debet dividere in tres partes: primam dabit Confeſſori, ſecundam Altari, tertiam orantibus pro eo:* but the Autor of this whence we have it, wrote not till after the *Norman* Conqueſt. And it is reported alſo of *Eadbert* Biſhop of *Lindisfarn* or *Holy Iſland*, that he was *Eleemoſynarum operatione* (as *i Bedes* words are) *inſigni ita ut juxta legem omnibus annis Decimam non ſolum quadrupedum, verum etiam frugum omnium & pomorum necnon & veſtimentorum partem pauperibus daret:* which words are almoſt repeated alſo by *Turgot* Prior of *Durham*, that wrote the ſtory of that Biſhoprick. But here no cuſtom of the place, or common uſe is noted, but only a ſpecial devotion of *Eadbert*, and for that of *juxta legem*, you muſt underſtand it of *Moſes* Law: and ſo is it expreſt in the *Saxon* Copy of *Bede*, where I read that he did it æfter Moyſeſe, and that is, *according to the Law of Moſes.* Neither is the regard in thoſe times had to a tenth (although not yearly) to be

h *In Bibl. Cott.*

i *Eccleſ. Hiſt. lib. 4. c. 29.*

k *Ms. in Biblioth. Cotton. & apud u. c. Th. Allen. Oxon.*

be paid as for a ſouls ranſom, to the poor, after the death of every Biſhop out of his eſtate, to be here wholly neglected. Out of this regard may be inferr'd, that therein alſo the Tenth was reputed as a ſanctified part. And we learn it out of a Council *l* held in D.CCC.XVI. "In loco famoſo (*as the words of it are*) "qui dicitur *Celichyth*, Præſidente verò Wl- "fredo Archiepiſcopo cæteriſque adſedenti- "bus auſtralibus Anglorum Epiſcopis, *which* "*hath this Canon*, Jubemus, & hoc firmitèr "ſtatuimus ad ſervandum, tam in noſtris die- "bus quámque etiam futuris temporibus, om- "nibus ſucceſſoribus noſtris qui poſt nos illis "ſedibus ordinentur quibus nos ordinati ſu- "mus, ut quandocunq; aliquis ex numero Epi- "ſcoporum migraverit de ſeculo, tunc pro ani- "ma illius præcipimus ex ſubſtantia unicujuſ- "que rei Decimam partem dividere ac diſtri- "buere pauperibus in eleemoſynam ſive in pe- "coribus & armentis ſeu de Ovibus & Porcis "vel etiam in Cellariis, necnon omnem homi- "nem Anglicum liberare qui in diebus ſuis ſit "ſervituti ſubjectus, ut per illud ſui proprii la- "boris fructum retributionis percipere mere- "atur & indulgentiam peccatorum. And for the ſucceeding times of the *Saxons*; we may well conjecture a practice of payment out of King *Knuts* Epiſtle ſent in M.XXXI. as he departed homeward from *Rome*, by *Living* Abbot of *Tanyſtock*

l *Ms.* (*compact.*) *inter Monimenta Eccleſ. Landav. in Biblioth. Cott.*) *cap.* 10.

Tanyſtock to *Athelnoth* and *Alfrique*, the two Archbiſhops by name, and to the reſt of the Biſhops and Baronage of *England*: he therein ſtraitly charges them all, that according to the antient Law, they ſhould take care that Tithes were duly paid among other Church revenues, wherein if he found default at his coming, they ſhould expect ſevere puniſhment. The words were, "Nunc *m* igitur obteſtor omnes Epiſcopos me-"os & regni mei præpoſitos per fidem quam mi-"hi debetis & Deo, quatenus faciatis ut ante-"quam in Angliam veniam, omnium debita, quæ "ſecundum legem antiquam debemus, ſint per-"ſoluta, ſcilicet eleemoſyna pro aratris, & De-"cimæ animalium ipſo anno procreatorum, & "Denarii quos Romam ad ſanctum Petrum de-"betis, ſive ex urbibus ſive ex villis, & mediante "Auguſto Decimæ frugum, & in feſtivitate "S. Martini primitiæ ſeminum ad Eccleſiam ſub "cujus Parochia quiſq; degit quæ Anglice *Curc-"ſeet* nominatur. Hæc & alia, ſi cum venero, "non erunt perſoluta, regia exactione ſecundum "leges in quem culpa cadit diſtrictè abſq; venia "*n* comparabit: and the Monk that relates it, adds, *nec dicto deterius fuit factum.* But what ever may be out of theſe teſtimonies concluded, it is noted among the Laws attributed to *Edward* the Confeſſor, that what through the coldneſs of devotion, what through the neglect of demanding Tithes by the Clergy, that were otherwiſe

m Apud G. Malmsbur. de geſt. Reg. Angl. lib. 2. cap. 11.

n Forſan Compenſabit.

otherwiſe grown very rich in real endowments, the practice of payment of them was much diminiſhed. *Sed poſtea inſtinctu diaboli* (are the words which follow immediately what is before in the Chapter of Laws §. XIII.) *multi Decimam detinuerunt, & Sacerdotes locupletes negligentes non curabant inire laborem ad perquirendas eas, eo quod ſufficienter habebant ſua neceſſaria vitæ. Multis enim in locis modo ſunt tres vel quatuor Eccleſiæ ubi tunc temporis una tantum erat, & ſic ceperunt minui:* but we are not ſure that this addition to the Law is as antient as the Confeſſor, I think it indeed rather of ſomewhat later time: yet doubtleſs the general practice of payment according to thoſe antient Laws, however it might be in elder times, was about the *Norman* Conqueſt, much diſcontinued, which may be ſpecially obſerved out of that book of *Domeſday* (the original Copy whereof yet remains in the Receipt of the Exchequer) in which the Poſſeſſions and Revenues both of the Clergy and Laity were accounted and valued, by the oaths of Enqueſts taken in every County upon commiſſion, and ſo returned thither about the end of the Conquerors Reign. There, frequently enough, Churches are mentioned by the words of *Ibi Eccleſia & Presbyter*, or ſuch like; and how many Carues or Hides of land, how many villans, and other endowments and revenues belongs to them, are reckon'd, with their values.

But

But very rarely any Tithes among thoſe Church revenues are there found: if none at all had been nam'd, it might have been thought that they had been omitted as a more ſacred profit, than was fit to be taxed in ſuch a Deſcription. But ſome, although very few, occurr in it: as under *Terra Osberni Epiſcopi* in *Boſeham* in *Suſſex*, you may there find, that *Decimam Eccleſiæ Clerici tenent, & valet* XLs. where the leaſt value of the Manor is made at XL *l. per annum*: in *Hampſhire* under *Terra Osberni Epiſcopi*, you read *Eccleſia S. Michaelis de Monte tenet de Rege in* Baſingeſtoches *Hundred*, *unam Eccleſiam cum* 1. *hida & Decimam de Manerio* Baſingeſtoches. *Ibi eſt Presbyter.* So in the ſame Shire under *Terra Regis*; *Ipſe Rex tenet* Wallope, &c. *ibi Eccleſia*; *cui pertinent una hida & medietas Decimæ Manerii & totum* o Curſet, *& de Decima villanorum* XLVI. *denarii & medietas agrorum. Ibi eſt adhuc Eccleſiola ad quam pertinent* VIII. *acræ de Decima*: for theſe VIII. acres of Tithes, ſee before in the Chapter of Laws §. IX. X. and XI. And in the ſame Shire alſo among the Abbot of *Lire*'s poſſeſſions, the Tithe of *Cladford* is reckon'd, as alſo of *Adrintone*: and alſo the Tithes of *Stanham* are poſſeſſed there by one *Richerius* Parſon of the Church of *Stanham*: and under *Terra Canonicorum de* Tuinham, is found, *Ad hanc Eccleſiam pertinet tota decima de* Twinham, *& tertia pars Decimarum de* Holcheſt. *and* in

o *i.* Church ſcet.

in the Iſle of *Wight* there, VI. Churches, belonging to the Abbey of *Lire*, *Decimas habent de omnibus redditibus Regis.* So in *Bedfordſhire*, the Church of *S. Marie de Cormeliis*, hath divers Tithes among its revenues. But the mention of Tithes where Churches are nevertheleſs ſpoken of, is but very ſeldome through that whole Deſcription: and indeed in certain Counties, as *Somerſet*, *Devon*, *Cornwall*, and ſome few others, you ſhall rarely have a Pariſh Church noted, but in others, very often Churches are, but very few examples of their having Tithes: ſometimes alſo grants of Tithes by Lay owners are there mention'd, out of the uſe of which, it may be well thought that the moities or third parts of Tithes belonging to this or that Church, had their beginnings. But thereof more particularly in the next Chapter, where we ſpeak of arbitrary Conſecrations. And in moſt Appropriations of Pariſh Churches made in the *Saxon* times (the antient courſe being to grant, in appropriating, *Eccleſiam cum Decimis*) no mention is of *Decima*, but other poſſeſſions of the Churches granted are moſt particularly inſerted in the inſtruments; of which ſome examples are publiſhed in *Ingulphus* Abbot of *Crowland*, and very many occurr in Chartularies of old Monaſteries. But ſee alſo for this matter the authorities anon brought to another purpoſe in the XIV. Chap. §. 2. For the following age (beſides ſome examples related in *Ms. in Bibl. Cott.*

the next Chapter, out of which ſome kind of known payment at leaſt, to ſome Churches, may be without difficulty collected) that we may here omit alſo the divers Appropriations, in the *p* times preſently enſuing the Conqueſt, of *Eccleſiæ cum Decimis*, which denotes either ſome payment or intereſt of Tithes ſetled by Conſecrations in them; In the life of S. *Cutbert* Biſhop of *Lindisfarn* written by ſome Monk under *Hen.* I. it is related, that in that Autors time a great penury of food being in *Lindisfarn* (that is, in *Holy Iſland*) the Sea left upon the ſhoar LXV. fiſhes, whereof every one was a ſufficient draught for a yoke of Oxen; and that a Monk came to the Lord of the adjoining ſoil, and deſired the Tenth of that abundance ſo ſent by the hand of God. *Saltem Decimas* (as the words are) *quod Legis & Provinciæ conſuetudo exigebat, Eccleſiæ requiſivit, ſed omnibus negatis rubore ſimul & dolore confuſus diſceſſit:* here the practice of payment is noted by *Provinciæ conſuetudo*: and about the ſame time the faſhion about *Abingdon* was to pay the Tithes to the Abby (due either as it was an ealdep Mynrtne by K. *Edgar*'s Law; or as they had been conſecrated; whereof more in the next Chapter) by whole Hides and Acres. *His diebus*, ſayes the Chartularie of that Abbey, *raro à quoquam Decima meſſium ut lege præcipitur in Abbatia ipſa dabatur, ſed aut de Hidagio XL. manipuli quos vulgo garbas vocant, aut Decima ſuæ*

p Ante alia Vett. monumenta conſulas ſi placet *Cartul. Roffenſis Eccleſiæ*, ib.

ſuæ culturæ Acra porrigebantur: and for the time under *Henry* the ſecond; an Epiſtle ſent from *Rome* by Pope *Alexander* the third, to the Biſhops of *Worceſter* and *Wincheſter*, recites the general inſtitution (which may be underſtood for cuſtom) of the Church of *England* to be, that every Pariſhioner ſhould pay his Tithe corn to his own Pariſh. *Cum homines* (ſo it *q* ſpeaks) *de* Hortuna *ſecundum generalem Eccleſiæ Anglicanæ inſtitutionem, de frugibus ſuis novem partibus ſibi retentis Decimas Eccleſiæ cujus parochiani ſunt ſine diminutione ſolvere teneantur, &c.* wherewith agrees the preamble of his Decretal, remaining yet in the body of the Canon *r* Law, there he begins with *Quod cum Parochiani veſtri* (that is all the Pariſhioners within the Dioceſs of *Canterbury*) *Decimas bonorum ſuorum conſueverint Eccleſiis, quibus debentur, cum integritate perſolvere; nunc tam laudabili conſuetudine prætermiſſa quidam ex eis de lana & de fœno, & de proventibus molendinorum & piſcariarum Decimas ipſis Eccleſiis ſubtrahere non verentur:* hereto add, that of one of his predeceſſors *ſ Hadrian* the fourth to the Archbiſhop of *Canterbury*, where a Parochial payment of Tithes ſeems to be ſpoken of as of known right: and in a compoſition made by the Abbot *t* of *Eveſham* a Judge Delegat from Pope *Honorius* in M. C C. XX. it is taken clear, that certain Tithes *de jure communi pertinent ad Eccleſiam de* Leonminſtre *eo quod*

q *In Append. ad Concil Later. part.* 4. *cap.* 4.

r *Extr. tit. de Decimis c.* 5. *pervenit.*

ſ *Ibid. c.* 4. *Commiſſum eſt.*

t *In Regeſt. Mon. Leonminſt. ſive Reading* in Bibl. Cotton: & vide *App. ad Concil. Lat. part* 48. *cap.* 1.

ſitæ ſunt infra limites Parochiæ Eccleſiæ de Leonminſtre, according as the Texts of the Canon Law of about that time expreſly alſo affirm. The compoſition was between ſome of the Dioceſe of *Hereford*, and the Abbot of *Wigmore*. Like admiſſions of that Law are in other inſtruments, in the Leger book of *Reading*, for the Church of *Lemſter*. But conclude not out of them for practice, without obſervation of the examples of the next Chapter. And it appears that in 11 *Hen.* 3. a ſpeciall grant was made by the King, that Tithes of Hay and Mills ſhould be paid from thenceforth in all his demeſnes lands (that is all occupied either by his Villains or Bailiffs, or by Leſſees that came in after the grant) which before then had not been paid. *Dominus Rex*, ſays the *u* record, *de Concilio Archiepiſcoporum & Epiſcoporum ſuorum conceſſit ut Decimæ fœni & molendinorum de ſingulis Dominicis ſuis in regno ſuo de cætero præſtentur. Et mandatum eſt ballivis de* Corſham *quod de Dominico ſuo de* Corſham *Decimas fœni Eccleſiæ de* Corſham *dari faciant. T. R. apud Weſtmonaſt.* XVIII. *die Maij.* and according to this, were divers cloſe Writs ſent out in the following years. Of the times afterward, we find more certain teſtimonies ſhewing the common right of Tithes and that Parochiall; as the Writ of *Indicavit*, grounded upon the Statute of *Circumſpectè agatis*, made in 13 *Ed.* 1. diſcovers, that in and before that time the

u Rot. Claſ. 11 Hen. 3. par. 1. membr. 9. in Dorſo. & Rot. Claſ. 12 Hen. 3. memb. 7. in Dorſo, & Claſ. 17 Hen. 3. Dorſ. 16. & Dorſ. Claſ. 20 Hen. 3. memb. 24. & Claſ. 21 H. 3. membr. 10.

the Parochial Tithes were moſt known revenues of every Church, with which agrees the antient and preſent form of the Count, in a Writ of Right of Advowſon of a Pariſh Church, wherein the Eſplees are chiefly laid in Tithes, becauſe the *Advowſon of the whole Tithes, is no other than the Advowſon of the Church*, as Judge *Stoner* x ſayes in *Corbet*'s caſe. And by the practice of the Kingdom, it became clear Law (as it remains alſo at this day) that regularly, if no other title or diſcharge, to be ſpecially pleaded or ſhewed in the Allegation of the Defendant, might appear, every Parſon had a common right to the Tithes of all annual encreaſe (predial and mixt) accruing within the limits of his Pariſh, without ſhewing other title to them in his Libell. That appears frequently in our Year books, where the Iſſues, taken upon Parochial Limits, are reported. But we may here not untimely remember an occurrence in the Petitions y of the Parliament of 33 *Ed.* 1. touching the Tithes of *Cornwall*, challenged by the Parſons and Vicars there. *De Perſonis & Vicariis* (ſayes the entry) *petentibus Decimam in Cornubia, ubi Rex ſolvit annuatim Epiſcopo Exonienſi pro Decima prædicta; ita reſponſum eſt. Fiat ſicut conſuevit tempore Comitis & Regis.* The Earl and the King there meant, are that great *Richard*, and *Henry* the third. But this muſt not be underſtood of the Tithes generally

x 4 Ed. 3. fol. 27. a.

y *In Codice Vit. Ms.* apud *u. C. I.* Eorough *Scriniorum in Arce Lond. præfectum.*

in the County, although the words might import as much, as if the Biſhop had receiv'd them all. It was doubtleſs for the Tithe of the Stannaries only. For it is true, that the Biſhop of *Exceter* had the Tythe of the profits or rent of the Stannaries there antiently given and paid him: and thereof teſtimony enough z is upon record: and to that purpoſe alſo is that Marginal Note, in the Book of thoſe Parliaments, *Stagmen Cornubiæ:* clearly, that goes for the *Stannum Cornubiæ*, as *Stagminatores* for thoſe of the Works. For the time of *Edward* the third and *Richard* the ſecond (beſide that of the Tithes of *Sylva cædua*, or Copis Wood, whereof enough before, in the Laws that belong to it) you may remember thoſe complaints of *Chaucer*'s Plowman againſt the Clergy of his age.

z Vide *Rot. Fin.* 4 *Hen.* 3. *membr.* 1. & *Clauſ.* 5 *Hen.* 3. *membr.* 6.

Their Tithing and their Offering both
They clemeth it by poſſeſſion,
Thereof nil they none forgo,
But robben men by ranſome.

And then, of Pariſh-Rectors.

For the Tithing of a Ducke,
Or an Apple, or an Aye,*
They make men ſwere upon a Boke,
Thus they foulen Chriſts fay.

* Egge.

And

And,

He woll have Tithing and Offering,
Maugre whoſoever it grutch.

And in the Freres Tale,

And ſmall Tithers they were ſoule yſhent.

before the Arch-deacon. To theſe (for Perſonal Tythes) you may add that of Mortuaries, payable in Beaſts regularly before the Statute of 21 *Hen.* 8. which were reputed due upon the general preſumption of every Defuncts negligence in payment of his perſonal Tithes. The Mortuarie was therefore (by the Canons) to be preſented with the Body at the Burial, as a ſatisfaction of omiſſion, and negligence in paying to the Church [a] thoſe Perſonal Duties. And thence was it ſtiled *Corſe-preſent*; according whereto, I have ſeen a Juſtification in the Eire of *Derby* of 4 *Ed.* 3. to an Action of Treſpaſs brought by *Thomas* of *Gouſtill* againſt the Parſon of *Whitwell*, for the taking of a Horſe; in which the defendant pleads, that it was the Horſe of one *I. Leyer* his Pariſhioner that dyed, *Et que le dit Chival enſemblement ove autres choſes fuſt meſnes & preſent al Eſgliſe come en noſme de Mortuarie devant le corps meſme le jour, &c. & il come Parſon les priſt & reſcent auxi come cuſtome de la terre & de Seint Eſgliſe eſt, &c.* Theſe ſhew plainly the received and acknowledged

[a] *Lindw. tit. de conſuetudine, c. ſtatutum, lit. f. & 21 Hen. 8. cap. 6.*

ledged Parochial right, in the practice of those times, which hath to this day continued: neither is it at all necessary to add more for the uniform continuance of it. Saving only, that where any Statute hath made a discharge, or Prescription or Custome hath setled a *Modus Decimandi* or certain quantity payable, though never so little, for the Tithe, there, by the Laws of the Kingdome, the owner is not bound to pay other Tithe, than the Statute or Custome or Prescription binds him to. Which yet must be so understood in the case of Lay-men, that Custome or Prescription founded in their possessions as Lay, cannot wholly discharge the Tithe, or be *de non Decimando*, but may well be *de modo* only; otherwise is it in the case of spiritual persons, that may by the common Law be by Prescription wholly discharged, and prescribe *de non Decimando*. And this is regularly clear Law. But at what time this Parochial and common right became first setled with us in practice, is not so clearly known: and though those Decretals, before cited, suppose it a thing of custom here in *Henry* the II. his time, yet if credit might be given to the report of those *English* Monks, which (as we have before related) referr'd the ordaining of Parochial right in Tithes to the General Council of *Lyons*, held under *Gregory* the tenth, then we might conclude, the right of it no antienter than about the beginning of our *Edward* the first. But whatever

ever they meant, it is certain, that ſome, both Synodal and Secular Laws of this Kingdom, had, before that time, ordained this right. Yet indeed it will be found, that the Practice of it here (as alſo in other Countreys) was not ſetled till ſome M. C C. years after Chriſt, or, at leaſt, was, for many years before, and ſome after, diſcontinued. Which may partly be collected out of that Decretal of Pope *Innocent* the third, ſent into this Kingdom, and dated in the *Lateran*; which is before at large in the Chapter of Laws, §. X X I I I. For however the recitals are in thoſe of *Alexander* the third (the one ſpeaking of *Generalis inſtitutio* for Parochial payment, which, as it may denote common cuſtome, ſo alſo may be underſtood for ſome Law of the Kingdom, as that of *Edgars*, *Knouts*, the Confeſſors, or ſome other before related; the other, of *Conſueverint Eccleſiis quibus debentur*, which doth not of neceſſity include a general practice of Parochial payment, but may as well denote the duty that comes from arbitrary Conſecrations; of which, in the next Chapter) it is moſt certain, that before, about the year M. C C. after Chriſt, that is, about the time of King *John*, it was moſt commonly practiſed by the Laity, to make arbitrary Conſecrations of the Tithes of their poſſeſſions to what Monaſtery or Church they would, ſometimes giving half, ſometimes a third part, and at their pleaſure all, in perpetual

right, or otherwiſe, according to the nature of thoſe Conſecrations in other Countreys; of which, enough is before related. Neither doth expreſs teſtimony hereof want in that Decretal of *Innocent* the third, made againſt theſe kind of arbitrary Conſecrations. *Multi* (ſaith he) *in Dioceſi tua* (that is the Province of *Canterbury*.) *Decimas ſuas pro ſua diſtribuunt voluntate.* Neither may you underſtand it, as if it had been done by the waiward oppoſition of ſome only againſt the receiv'd and allow'd Laws of the Kingdom. For notwithſtanding all thoſe Ordinances, both Secular and Synodal, antiently here made for due payment, it is clear, that in the time before about that *Innocent*, it was not only uſual, in fact, for Lay-men to convey the right of their Tithes, as Rents-charge, or the like, to what Church or Monaſtery they made choice of, but by the courſe and practice of the Law alſo of that time (both Common and Canon, as it was here in uſe) ſuch conveyances were clearly good, and what was through them ſo acquired, was continually, and is to this day (except ſome particulars, which either the Popes authority of later time, or new Compoſitions or Grants, or the like, have altered) enjoyed by the Churches, that, yet remaining, had portions ſo antiently given them, or by the King or his Grantees of impropriated Tithes; very many of which, had their chief original from thoſe arbitrary Conſecrations

tions (which you may well call Appropriations of Tithes) and not from the appropriating only of Pariſh Churches, as ſome out of groſs ignorance, with too much confidence, deliver. But thereof you may ſee more in the examples of the next Chapter: where, for moſt apparent proof of the practice of arbitrary Conſecrations in thoſe times, Monuments enough are collected. This arbitrary diſpoſition, uſed by the Laity as well *de jure* (as the Poſitive Law, then received and practiſed, was) as *de facto*, is that which *Wiccleſ* remember'd in his complaint to the King and Parliament under *Richard* the ſecond. His words are: *A Lord God,* h *where this be reaſon, to conſtrain the poor people to find a worldly Prieſt, ſometime unable both of life and cunning, in pompe and pride, covetiſe and envie, glottony, drunkenneſſe and lecherie, in ſimonie and hereſie, with fat Horſe, and jolly and gay Saddles and Bridles, ringing by the way, and himſelfe in coſtly Clothes and Pelure, and to ſuffer their wives and children, and their poor neighbours, periſh for hunger, thirſt, and cold, and other miſchiefes of the world. A Lord Jeſu Chriſt, ſith within few yeeres, men payed their Tithes and Offerings at their own will free to good men, and able to great worſhip of God, to profit and faireneſſe of holy Church fighting in earth.* e *Where it were lawfull and needfull, that a worldly Prieſt ſhould deſtroy this holy and approved cuſtome, conſtraining men to leave*

h *Why is this reaſon,* or *a this reaſon.*

e *Why is it lawful.*

this freedome, turning Tithes and Offerings into wicked uſes. But what he calls a few years, will fall out to be about CC. for he wrote about the year M.CCC.XC. With him well agree ſome paſſages in our Year-books of the times before him. As in 7 *Ed.* 3. *fol.* 5. *a. Parning* truly affirms, that *in auncien temps devant un Conſtitution de novelle fait per le Pape, un Patron d'un Egliſe poit graunter Diſmes, deins meſme le Paroche a un altre Paroche.* And *Herle* there in his anſwer ſeems to admit it clear. So alſo (touching others as well as Patrons) *Lodlow*, Judge of Aſſiſe in 44 *Ed.* 3. *fol.* 5. *b. En auncien temps cheſcun home purroit graunter les Diſmes de ſa terre a quel Egliſe il voudroit. Quod veram eſt*, ſayes Judge *Brooke*, in abridging the caſe. But what new Conſtitution of the Pope is meant there by *Parning?* ſome later *d* Books tell us, that from the Council of *Lateran* the firſt alteration of that courſe of arbitrary diſpoſition came. But plainly, no Council of *Lateran* hath any Canon that alter'd the Law in it, except that under *Alexander* the third, before ſpoken of in the end of the ſixth Chapter, may have place here: which, indeed, the Canoniſts will not endure, unleſs you reſtrain it only to antient Feudal Tithes. And they ſuppoſe, every man might have arbitrarily conveyed, before that Council, his Feudal Tithes to what Church he would. And ſo expreſly ſayes our

d Vid. 10 *H.* 7. *fol.* 18. *a.* 7 *Ed.* 6. *Dyer. fol.* 84. *b. & Coke Report* 2. *fol.* 44. *b.*

e Lind-

e *Lindwood. Ante illud Concilium bene potuerunt Laici Decimas in feudum retinere & eas alteri Eccleſiæ vel Monaſterio dare; non tamen poſt tempus dicti Concilii.* But if thoſe which with us talk here of the Council of *Lateran*, mean that under *Alexander* the third, and apply it generally to arbitrary Conſecrations of new Tithes, not feudal, I doubt they are much nearer the true meaning of that Council than any of the Canoniſts: eſpecially while they ſpeak of this Kingdom: for arbitrary Conſecrations before about the time of that Council are found here infinite, as preſently ſhall be ſhew'd. But of antient feudal Tithes (however they were common in other States) ſcarce any mention at all or taſte is with us: but thereof more in the XIII. Chapter. And, it may be, that when, from the Canoniſts, ſome of our Lawyers had learned that feudal Tithes might have been conveyed before that Council arbitrarily by the owner; and ſaw withal that ſcarce any ſign was of feudal Tithes in this Kingdom, yet an abundance of old arbitrary Conſecrations, the uſe whereof ceaſed about the time of the Council; in the words of it no regard or mention being had of feudal, but only Tithes in general; they concluded (who ſees enough why they might not?) that before that Council every man might have arbitrarily diſpoſed of his tithes: that is, ſuch tithes as were not formerly ſetled by any civil Title.

e *Tit. de locat. & conductio c. licet. & vulg. portionis.*

But if this will not be allow'd for the Law of change of thoſe arbitrary conveyances; why may it not firſt be that *Parning* by his *Conſtitution de novelle fait per le Pape*, meant that [f] of Pope *Innocent* the third, ſent to the Archbiſhop of *Canterbury* in King *Johns* time (and perhaps it was ſoon after receiv'd into the Province of *York* either by imitation, or through the power Legatine, which the Archbiſhop of *Canterbury* commonly exerciſed through the whole Kingdom) to command a Parochial payment? For alſo by the name of a Conſtitution newly made by the Pope, ſome ſuch thing rather than a Canon of a general Council, is perhaps denoted. And then why might it not happen, that the Decretal of *Innocent* the third, bearing date in the Church of *Lateran* ſhould be thence denominated, and that afterward thoſe which truly underſtanding it, called it therefore a *Lateran* Conſtitution, gave cauſe of miſtaking to others that took it for a Conſtitution of a general Council of *Lateran*? eſpecially too becauſe it was about the time of the general Council of *Lateran* (held under the ſame Pope that ſent it) of which more notice hath been taken in our Law, than of any other of that name: and indeed he that affirms, that before the Council of *Lateran* Lay-owners might have diſpoſed their Tithes, *cuicunque Eccleſiæ ſecundum meliorem devotionem*, as *Dyer*'s words are, ſpeaks true enough, if his words may receive this

[f] *Quam vide ſupr. cap. 8. ſect. 23.*

this eaſie interpretation: that is, that till about that Council of *Lateran* they might have done ſo; not that the Council under Pope *Innocent* reſtrain'd it, but that either the next Council of *Lateran* before, that is under *Alexander* the III. or the Pope by a Conſtitution, received here from *Rome*, and dated in the Church of *Lateran*, about the time of that Council of the year M.CC. XV. ordain'd the contrary: ſo that in this laſt way the name of the Council may be a note only of the time about which it was reſtrain'd, not of the autority whence it was forbidden. Perhaps thoſe Canons of Pluralities, of Exemptions, of the three orders, and ſome ſuch more which we receiv'd from that Council under *Innocent*, were brought into *England* at once with this Decretal Epiſtle; and if ſo, then alſo it was no more ſtrange to have the Decretal afterward titled by the name of a Conſtitution of the *Lateran* Council, than it happen'd in the denomination of the Statutes of *Aide de Roy* and *Voucher*, made in 4 *Ed.* 1. every of which are ſtiled by the name of *Statutum de Bigamis*; yet only one Law *de Bigamis* receiv'd out of the general Council of *Lions*, is among thoſe Statutes; and that is even as much a ſtranger to the reſt of the Conſtitutions bearing the ſame name with it, as Pope *Innocent*'s Decretal was to the whole Council of *Lateran*. However, it is moſt clear (let froward ignorance as it can continue to oppoſe the aſſertion)

tion) that for CC. years at leaſt before about the time of the Council of *Lateran*, held under the ſame Pope, arbitrary Conſecrations of Tithes with us were frequent, and practiſed as well of poſitive right (if we may take that for right, in things ſubject to humane diſpoſition, which general conſent of the State allow'd; as no man that knows what makes a poſitive right, can deny) as of fact; which becauſe they are beſt conceiv'd of by the particular teſtimonies and precedents of them, in the following Chapter many ſhall be tranſcribed, that are all (except one or two in the Province of *York*; neither is it likely that in every place here, and by every man the intent of that Conſtitution was ſuddenly obſerved, and perhaps alſo it was not ſo ſoon alter'd in *York* Province as in this of *Canterbury*, in regard that the Decretal was ſent only to *Canterbury* Province) of the time before that Decretal, and taken out of the moſt choice and authentique monuments, that may afford help to the diſquiſition of this point ſo little, ſo not at all vulgarly or indeed any where publiquely diſcovered.

CAP. XI.

I. Arbitrary Conſecrations *of* Tithes (*before about the time of the moſt known Council of* Lateran) *by conveyance from the owner of all or part to any Church or Monaſtery at his pleaſure,*

ſure, in examples ſelected out of monuments of infallible credit.

II. *A Writ in the* Regiſter *intelligible only from thoſe arbitrary Conſecrations: a like example to it out of the book of* Oſney.

III. *The liberty of the* Baronage *anciently challenged to* build Churches *in their Territories.* Parochial right *to* Tithes *ſetled in* Practice.

IV. *Of* Tithes *of encreaſe in* lands not limited *to any* Pariſh, *How by the common Law they are to be diſpoſed of.*

BEſides the many teſtimonies that may be had out of the Portions eſpecially poſſeſſed by ſome Churches or Monaſteries, many of which had no other beginning than from arbitrary Conſecrations, made by owners of Tithes, in two parts, or third parts, or otherwiſe at their pleaſure to any Church or Monaſtery; the frequent memory of Inſtruments of ſuch Conſecrations (made according to the practiſed Law of the time chiefly interceding from the year M. till ſome years after M. C C. of our Saviour) is to be principally obſerved in this diſquiſition. The original monuments of thoſe elder ages afford us plenty of them. And in regard of the eaſier connexion and more compendious way of delivery, we ſhall rather ſeverally follow the ſingular courſes of every of the Chartularies or other monuments, which tell us of thoſe kind

of conſecrated Tithes, than diſpoſe together every arbitrary Conſecration according to the order of time. The ſeveral Titles of books whence we have them chiefly direct in the general order, but neither ſhall the particular time, of every of theſe ſelected examples of Conſecration, be omitted.

a *In bibl. Cottoniana.*

I. The Chartulary of the Abbey of *a Abingdon* ſhall obviouſly have firſt place. In it, in the time of K. *William* the ſecond and *Rainald* Abbot, occurrs; that "Vivente prædicto *Rainaldo* "Abbate, trium Decimationum, Eccleſiæ huic "facta eſt una ab *Herberto* de villa ſua *Latine*, "appellata *Henrici de Ferrariis b* Milite; ſcilicet "frugum, agnorum, caſeorum, vitulorum, & "porcellorum. Quod & *Robertus* filius ejuſdem "poſt patris mortem confirmans, concedente "Domino ſuo prædicto *Henrico*, *Abbendoniam* "venit, pro patris & ſui ſuorumq; ſalute præ-"fatam hîc Decimationem perpetualiter tra-"didit; ſibi fratribus ſuis germanis *Huberto* & "*Stephano* in his faventibus; etiam iſtis amicis "ſuis videntibus *Quirio* de *Mænais*, & fratre "ejus *Hugone* & *Roberto* filio *Aldulfi* de *Betre-*"*tuna*. Altera à *Seſwaldo* de villa ſua *Hibdeſtea* "caſeorum ſcilicet & vellerum ſuarum ovium. "Quod & hæres & filius ejus *Frogerus* poſt eum "denotè confirmavit. Quæ utræq; Decimatio-"nes luminaribus & miniſteriis Altaris Sanctæ "Mariæ ab eo die ſpecialitèr delegatæ hucuſq;

b *L. Militis.*

"in

" in hoc expenduntur. Tertia à *Rotberto* cujus " erat cognomen *Marmiun*, & à filio ipſius " *Helto* de villa ſua *Henreda*, frugum omnium " ſuæ propriæ lucrationis. Sed & poſt illos à " *Radulfo* cognomento *Roſel* idem conceſſum. *And then follows* Roſel's *Charter to that purpoſe.* " Ego *Radulphus* agnomento *Roſellus* concedo " volo atque præcipio ſervientibus meis ut ſe- " getes meas de *Henreth* deciment ad oſtium " Granciæ meæ quæ ibidem habetur & ipſam " Decimam rectè & fidelitèr ſervienti S. Mariæ " deliberent. And this Tithe was in the ſole diſpoſition of the Almoſner of the Abbey. Out of IV. Hides alſo lying in the ſame *Henred*, a conſecration of the Tithe had been made before in the time of the *Daniſh* government, by a *Dane*, and is thus there reported. " Tempore " Danorum, fuit quidam eorum qui poſſidens " VII. hidas in *Henreda*, propter vicinitatem " *Abbendoniæ* & amorem S. Mariæ Virginis & " aliorum Sanctorum qui mihi digniter colun- " tur, dedit Decimam de Dominio ejuſdem ter- " ræ Eccleſiæ S. Mariæ Abbendonenſi in eleë- " moſynam pauperum hoc eſt de IIII. hydis; " quam terram *Helto Marmiun* Deo & Sancto " Stephano Cadomi dedit. Eccleſiæ verò *Ab-* " *bendonenſi* Decima de Dominio prædicto in " ævum permanſit. Then follows a Charter of *Henry* the firſt, wherein all the grants of Lands, Churches and Tithes made or thence after to be

made by *Alberique de Ver* and *Beatrix* his wife, their ſon *Alberique* and his brothers, or by their Tenants to the Monaſtery of *Colme* in *Eſſex* (which was a member or as a Cell of *Abbingdon*, and erected by *Alberique* their father) are confirmed; and in them two parts of the Tithe *de omnibus rebus* in the Mannors of *Hethingham*, *Belcheam*, *Laureham*, *Aldeham*, *Duurecurt*, *Bonecleide*, and *Rodinges*, and half of the Tithe of *Walde* and *Wadune*, are recited to have been conveyed to the ſame Monaſtery, *Et dimidia Decima* Deimiblanc *de Cola*, *& Tertia pars Decimæ Ranulfi magni*: this is dated X I. *Hen.* 1. at *Reding*, that is M. C. X I. And *Faritius* Abbot of *Abingdon* (as it is further remembred) at *Colme* ſolemnly received inveſtiture of ſeiſin of every of thoſe and other poſſeſſions ſo granted by the hand of *Picot* Sewer to *Alberique de Ver*, with the teſtimony of his wife, children, and many of his Tenants. And the Patent of *Henry* the firſt is there extant, wherein *tota Decima ac venatione quæ capta fuerit in Foreſta de Windeſore*, is granted to the Abbey, which was after confirmed by *Henry* the ſecond, *Richard* the firſt and others. In the ſame Chartulary about the beginning of the ſame *Henry* the Tithes of *Bulhey* of *Cildeſiun* are given to the Abbbey by *William* of *Sulaham*; in *Hanney* by *Osbern* and *Turold*, of *Offington* by the Tenants there; of *Wekenfield* by *William* of *Wecenfield*; of *Eton* by *Roger Fitz-*

Fitz-Alured, and divers ſuch are related, and the words of the moſt obſervable paſſages touching them ſhall be here inſerted. "Anno V. re-"gni *Henrici* Regis intrante (*ſays the Book*) "*Willelmus de Sulahæm* dedit Deo & Sanctæ "Mariæ & Abbati *Faritio* & Monachis in *Ab-*"*bendona* Decimam villæ ſuæ quæ *Bulhea* vo-"catur: die videlicet Aſſumptionis ejuſdem S. "Mariæ. Eodem etiam die confirmavit donum "de alia decima quam anteà dederat de villa "*Cildeſluna* quæ ad hæreditatem *Leodſelinæ* "privignæ ſuæ pertinebat, ipſâ puellâ coram "Monachis concedente donum: & cum ipſo "*Willielmo* & cum matre ſuâ ſuper Altare idem "impoſuit, coram his teſtibus; Abbate prædicto "& omni conventu, *Johanne* fratre conjugis "ejuſdem *Willielmi*, *Humfrido* ejuſdem Milite, "*Hugone Conred.* But that of *Turold* is thus expreſt. "Similitèr *Turoldus* de eadem Villa "(*that is*, Hanney) dedit Deo & Sanctæ Ma-"riæ de *Abbendona* coram *Faritio* Abbate & "omni conventu, in Capitulo, Decimam omni-"um ſuarum poſſeſſionum, porcellorum ſcilicet, "agnorum, vellerum: ſed Decimam Carucæ ſuæ "tantummodò ita diſcrevit, ut duas iſtius deci-"mationis partes huic loco, tertiam verò par-"tem Presbytero ſibi ſervienti concederet; hoc "idem concedente & confirmante uxore ſua "*Hugulina* & filio ſuo *Willielmo*: & hanc do-"nationem donavit anno V. *Henrici* Regis.

Here-

Here ſpecially you ſee as well arbitrary diviſion as conſecration of the Tithe by the owners grant. And for the example of the Tithes of *Offington*, the words of it are moſt obſervable alſo. " Eodem anno (*ſays the Monk that* " *wrote it*) cum veniſſet Abbas *Faritius* in vil- " lam ſuam *Offentunam* ut opus Eccleſiæ quod " ibi lapideum à fundamento inchoaverat ad " perfectum determinaret, congregaverunt ſe " homines ſui ex eadem villa & obtulerunt com- " muni devotione & conceſſione Decimam ſuam " totius villæ ejuſdem, S. Mariæ & ipſi Abbati " & loco *Abbendoniæ* ab illo in reliquum tem- " pus. Ut videlicet Abbas de ſuo proprio Eccle- " ſiam ejuſdem alacriùs conſtruendo perficeret " & ipſi mererentur in fraternitate loci annume- " rari. Hanc expetitionem cum Abbas audiſſet, " inquiſivit utrum Eccleſiæ ejuſdem villæ anti- " quitùs Decima ab illis hominibus daretur; no- " lens ſcilicet eam ſua rectitudine minuere pro " alicujus donatione ſibi ſuoque loco oblata, di- " ctumque eſt, hoc eſſe moris villæ ut à ſingula " virgata Eccleſiæ illi XXIIII. Garbæ pro " Decima numeratæ donarentur. Quod ſciens " Abbas, ſtatuit ante ipſos homines ut, ſicuti ipſi- " met voluerant & optulerant, reciperet eorum " Decimam, ea determinatione aſſignatâ inter " ipſum Abbatem & Eccleſiam ejuſdem villæ, " ſcilicet, ut tempore colligendarum Decimati- " onum Abbas ipſe mitteret *Offentonam* quem " vellet

" vellet de ſuis, & ipſe reciperet à ſingulis, ſecun-
" dum ſingulorum poſſeſſionem, rectam Decima-
" tionem, & poſt illam totam collectam, de ſin-
" gula virgata illius villæ tot manipulos Presby-
" tero illius Eccleſiæ tribueret quot ſuperiùs
" diximus ei deberi: reliqua verò Decimationis
" Abbati ſervaret. Here plainly, no Tithe was parochially paid before this grant, but only XXIV. Sheaves of every Yard Land; which was now diminiſhed alſo by the conſecration of the true Tithe to the Abbey. Then *Willielmus de Wecenfeld dedit ſuam Decimam ex omni ſua pecunia S. Mariæ & Monachis in* Abbendon *de tribus videlicet Hidis in* Wecenfeild, *& duabus de* Boxore, *excepta una acra quæ Eccleſiæ de* Boxore *adjacet.* This was in 7 *Hen.* 2. And in the relation of the Tithes of *Eaton*, granted to the Abbey by *Roger Fitz-Alured*, it is added, *Et promiſit quod cum* Oſmundo *& aliis ſuis hominibus de illa villa faceret ut & ipſi de ſuo tenore ſimiliter Decimam Eccleſiæ huic concederent.* So in 9 *Hen.* 1. Aldred & Luured *homines Eccleſiæ de* Waliford *dederunt Monachis hujus Eccleſiæ Decimas de omnibus videlicet ſuis pecoribus, & de agrorum ſuorum cultura, in capitulo coram toto contentu.* And in the ſame year, one *Ralfe* gave them the Tithe of his Farm or Mannor of *Bradendene*, and aſſured them, he would entreat *Robert de Inſula*, his Lord of whom he held *Bradendene*, *Quatenus illius permiſſione & conceſſu*

ſuo

ſuo hoc confirmaret, ut hæc Eccleſia ipſius Decimæ donatione firmius in poſterum potiretur. The like gift occurrs there, made by *Hugh Fitz-Wichtgar* in 10 *Hen.* 1. of the Tithes of *Bennaham.* And about the ſame time, *Gilbert Baſſet* gave for ever to the Abbey, with his ſon *Robert* entring there into Religion, the Tithe of his Land in *Waneting*, to be employed *ad uſum pauperum.* Not long after, *Hugo Diſpenſator Regis* (it ſeems, Treaſurer of the Houſhold) granted to the Abbey, *Suam Decimationem de omni pecunia tam de mobilibus rebus quam immobilibus de Manerio* Speſholt *quod de Eccleſia tenebat, ſua conjuge* Helewiſa *favente, coram his teſtibus*; Poidras *ſuo homine*, & Anſchitillo *ſuo præpoſito de prædicta villa, & multis aliis.* The like did *Ralfe* the Abbots Chamberlain grant out of two Hides in *Sterinford.* So one *Jocelin* and his ſon *Randoll* granted to the Abbey two parts of all kind of Tithes *in poſſeſſione quadam quæ* Grava *dicitur.* And one *Norman*, when his ſon *Endo* there took habit of Religion, conſecrated with him *Decimam dominii ſui de* Winterburne, *quam cui placeret Eccleſiæ libere donare poterat: quæ ſic conceſſa ſub manus ſacriſtæ redacta eſt.* And among other poſſeſſions of the Abbot and Covent, confirmed by the Bull of Pope *Eugenius* the third, in the year M. C. L I I. (that is, in X V I I. of King *Stephen*) theſe Tithes granted, are particularly reckoned in it, as part of what they

they did *in præſentiarum juſte & canonicè poſſidere*: ſo are the words of the Bull. Neither to other purpoſe are the words of the Biſhops of *Salisbury*, Ordinaries of the Dioceſe, in their general confirmations of Churches and Tithes to the Abbey. Theſe confirmations of theirs came divers years after the Grants made by the owners, and are at large extant in the Chartularies of the Monaſtery. The firſt that made any, was *Hubert*, who was conſecrated Biſhop in 1 *Rich.* 1. that is, M. C. L X X X I X. In the time of *Henry* the ſecond, through the procurement of *Richard* Sacriſtein of the Abbey, one *Giralin de Curzun* granted to the Abbey, *Decimam* X X X. *acrarum de* Weſtlakinge *quam parentes ſui prius conceſſerant & ipſe Altari ſanctæ Mariæ conceſſit, addens de Porcellis ſive Agnellis aut Caſeis aut rebus aliis quæ Decimari ſolent, Decimam, quam priores ſui minimè dederant. Hanc vero donationem ſuper Altare S. Mariæ devotus obtulit; trium tantum acrarum Decima de* X X X. *Eccleſiæ de* Waneting *reſervata.* Then, for Tithes in *Chiltune*; it is there reported, that in 2 *Hen.* 2. *Nicholas Fitz-Turold* gave them to that Monaſtery: his whole Charter is recorded, and ſo take it here for that part tranſcribed. *Notum ſit præſentibus & futuris teſtimonio hujus ſcripti ſigillo meo ſignati, quod ego* Nicholaus *filius* Turoldi *de* Eſtuna *pro ſalute animæ meæ parentumque meorum, & pro eo quod licitum mihi eſſet*

ab Eccleſia de Abbendona *cœmeterium habere capellæ meæ de* Winterburna, *conceſſi firmiter & finaliter dedi prædictæ Eccleſiæ* Abbendonenſi *ſingulis annis imperpetuum habendas Decimas terræ meæ quam in Dominio meo teneo in villa* Chiltune. *In blado ſcilicet ad oſtium Grangiæ meæ ſuſcipiendo & in Caſeis & in Villeribus & Agnis & Porcellis, & in omnibus quæ Decimari ſolent.* And at the time of the Grant, it was by the Abbot *Ingulph* aſſigned to the uſe of the poor and ſtrangers, that is, to the Almoſnery, as indeed moſt other of their conſecrated Tithes were: Which is yet to be ſeen in the accompts of the revenues of every Office of the houſe.

* *In Biblioth. Cotton.*

Out of the * *Chartulary of the Abbey of* Oſney.

The Abbey being founded in 29 *Hen.* 1. that is, in M. C. XXIX. by *Robert d' Oily* High Conſtable of *England*; in the Charter of the Foundation are given to it the Tithes of the Founders Mills, that were near the Caſtle of *Oxford*, *& Decimatio* Nicholai de Stodeham *quam* Fromundus (a Chaplain mentioned in the Charter) *tenebat*: and that is iterated often in other Charters to the ſame Monaſtery. And after in the ſame Chartulary is a Catalogue of divers Portions of Tithes belonging to the Abbey, and as iſſuing out of the Demeſnes of ſuch as had encreaſed the revenues of it with endowments of

of Tithes newly granted; nor are they expreſſed with any reference to this or that Pariſh, but only to the Demeſnes and names of the Donors. And then comes a confirmation of *Richard* Biſhop of *Lincolne* (within that Dioceſe, *Oxfordſhire* was, till the later inſtitution of a Biſhoprick in *Oxford*) wherein, among the ancient poſſeſſions of the Abbey, enjoyed through their having Saint *Georges* Church in the Caſtle by *d' Oily*'s gift, two parts of the Tithes of all things *quæ Decimari ſolent, in dominico horum Manerio-rum, videlicet*, Bercenceſtre, Erdinton, *&c.* are confirmed to it. Neither is the number of thoſe Mannors there named, under forty. Which way is it likely, that the Church of S. *George* came to two parts of the Tithes of ſo many Mannors, if not by conſecration of the owners? And indeed afterward is a tranſcript of a Charter of *Robert d' Oily*'s (that was above C. XX. years before the Biſhops confirmation) to the Abbey, wherein he gives three Hides in *Walton* and *Terram de Twenti* acre *& Decimam earundem terrarum, & pratum quod vocatur* Brunmannes Mead, *cum Decima ejuſdem prati* (where note, the Land and the Tithe of the ſame Land is given, which could be but a diſcharge of Tithes in the Abbey) *& cum Decima de* Northam, Wiveleya, *&* Lincha, *& omnium terrarum & pratorum & aliarum rerum Decimabilium quæ ſunt inter Caſtellum* Oxoniæ, *&* * Heunteſeyam *aut* Botleiam *ſcilicet in* Co-

An. Dom. 1150.

* Hincſey.

Comitatu Oxoniæ. And then *Duas partes Decimæ, de omni re quæ Decimari ſolet, de omnibus dominicis utriuſque honoris qui adjacent Caſtello* Oxeneſordiæ, *videlicet de* Hokenorton, Swereſordia, Bereford, Wiginton, *&c.* with a recital of above forty Towns and Mannors, which are alſo in that confirmation long after made by the Biſhop. In the ſame Book, *Richard* of *Dodeford* gives them in perpetual right the Tithes *de aſſarto boſci mei de* Hecholthe *cum aſſartatur & excultus fuerit, ſive ego ſive alius per me illum aſſartaverit & excoluerit.* This ſeems to be of about K. *Johns* time. And one *mei Hugh de Croſtes* grants them *Decimas dominii de* Wauretun *de omnibus rebus quæ Decimari poſſunt & debent, tenendas de Priore & Monachis de* Tedford *imperpetuum, ſicut cartæ utriuſque Monaſterii inter eos factæ teſtantur.* And this was in 3 *Rich.* 1. And a penſion was yearly payable for them to the Prior of *Thetford* by that clauſe of *tenendas*, as appears in the confirmation made of the ſame Charter by *William* Biſhop of *Hereford*. You muſt know, that the anceſtors of *Croſtes* had formerly given thoſe Tithes to the Priory of *Thetford*, as is remembred there alſo.

In Biblioth. Cotton.

*Out of the Chartulary or * Leiger-Book of the Priory of* Gisburne *or* Gisburgh *in the North-riding of* Yorkſhire.

In a Fine there of 23 *Hen.* 3. between *Peter* of *Brus*

Brus demandant, and *John* Prior of *Gisburne* tenant, it appears, that when *Robert de Brus*, anceſtor of *Peter*, under King *Stephen*, founded the Monaſtery; he by grant endowed it among other poſſeſſions, with the Tithe of his demeſnes of *Lithun*. And in another of 26 *Hen.* 3. the Concord hath theſe words in it, *Et ſimiliter idem* Petrus *conceſſit pro ſe & hæredibus ſuis, quod idem Prior & ſucceſſores ſui habeant in Parochiis ſuis Decimam venationis ſuæ & hæredum ſuorum; & fœnorum ſuorum ubicunque fœnum falcabitur præterquam in locis ſubſcriptis, ſcilicet in Parco ſub Caſtro de* Daneby *& in* IV. *Laundis in Foreſta de* Daneby, *ſcilicet in Launda de* Souresby, Eskebriggethwoyt, Karlethwoyt, *& in Launda ſub* Threlkeld, *& in Haya de* Skelton *clauſa ex aquilonali parte de* Routheline, *& in parvo Parco circa Caſtrum de* Skelton *in quibus locis nullas Decimas fœni habebunt.* That of the Tithe of Veniſon, taken within the Pariſhes of the Priory, was confirmed in another Fine of 30 *Hen.* 3. levied before the Juſtices of *Eire* in *Yorkſhire*; and therein alſo was further added, *Conceſſit etiam idem* Petrus *pro ſe & hæredibus ſuis, quod ipſi de cætero reddent ſingulis annis prædicto Priori & ſucceſſoribus ſuis & Eccleſiæ ſuæ prædictæ Decimas Molendinorum ſuorum in Parochiis ſuis exiſtentium imperpetuum.* So that if the Mills were in Leaſe, the Tenth of the rent was payable; if in the hands of the grantor, or his heirs, the

Tenth of the multure: and for true payment, the Millers were, by the concord of this Fine, bound to do fealty to the Prior and his ſucceſſors. But I have not ſeen an example of ſuch diſpoſition of Tithes of ſo late time, few or none elſe (I think) exceed the year of that Conſtitution of *Lateran* be'ore ſpoken of: and remember that this is of *York* Province, in which perhaps the Decretal ſent to *Canterbury* had not ſuch effect till ſomewhat after, as is before touched.

*In ſcpias dict. Bibliotheca.

Out of the Chartulary * of the Monaſtery of S. *Andrews* of *Rocheſter*.

Henry *the firſt gives to the Monks there divers Churches with Tithes*, "Et dimidiam Deci-"mam meam de *Tarentford* in annona tantum, & "totam Decimam meam de *Strades*, & totam de-"cimam meam de *Chealches*, & hoc facio pro ani-"ma Patris mei & Matris meæ & pro anima mea "& uxoris meæ, *T. Eudone* dapifero & *Haymone* "dapifero apud Roueceſtriam. *Other Tithes of whole Mannors he gave alſo to them*, "Et decimam "* Ba'enarum quæ captæ fuerint in Epiſcopatu "Roffenſi. *And about the ſame time* Ralf *Archbiſhop of* Canterbury *by Charter gave them* "Totam "Decimam de meo Dominico & omnes Deci-"mas omnium villanorum qui habent terram in "*Dune*, necnon & aliorum omnium, quorum "decimæ meo tempore adquiſitæ ſunt vel quo-"cunq;

* Hæc capitæ Regis ſunt. Prærogat. Reg. cap. 11. &c.

" cunq; tempore adquirentur. *Many other Charters are in it to like purpoſe, as :* " Ego *Willielmus* de " *Albineto* Pincerna Regis concedo Deo & Sancto " Andreæ de *Roueceſtria* & Monachis ejuſdem lo- " ci totam meam Decimam de villa mea quæ vo- " tur *Elham* in omnibus rebus ſcilicet de blado " & de paſnagio, & de molendinis, & de pecu- " dibus, & de lana, & de caſeis, &c. & medieta- " tem Decimæ de *Bilſintune* in omnibus rebus " pro anima Domini mei *Willielmi* Regis & " *Henrici* Regis atque pro anima mea & patris " mei & matris meæ & uxoris meæ & fratris mei " *Nigelli*, & nepotis mei *Humfridi* & aliorum " parentum meorum vivorum atque mortuo- " rum. Teſtibus militibus meis, *Nigello* de *Waſt &c.* That *d'Aubigny* was Earl of *Chicheſter* or *Suſſex* or *Arundel* (for all theſe titles he uſed) and divers Confirmations were afterward by his Succeſſors, of this Grant: and K. *Henry* the firſt alſo confirmed this of the firſt *William*; and the Prior and Covent not long after made a Leaſe of that their Tithe in *Bilſintune* to one *Gilebert de Perieres* for IX. years, reſerving half a Mark rent payable at *Eaſter*: and this was confirmed by the Archbiſhop of *Canterbury*.

Roger Bigot Earl of *Norfolk* under *Richard* the firſt, and *William* his younger ſon, had given divers revenues to the Priory, and among them occur the Church of *Waltune*, and then by it ſelf *tota Decima villæ* Waltune *de omni re & to-*

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ta Decima molendinorum ad eandem villam pertinentium: this is related in the confirmation of *Hugh Bigot* Earl of *Norfolk* and ſon to *Roger*: and ſome other Churches were granted, but no Tithes mentioned with them: and afterward the firſt Charter of *Rogers* grant is in the ſame volume at large. The Tithes of *Buggeley* were given to the Priory by the Anceſtors of *Osbert de Cappavalle*, and charged with three ſhillings yearly rent, payable to the Monks of *Colcheſter*: this inſtrument there remaining ſhews it. "Notum ſit omnibus (*as the words are*) "quod ego *Osbertus de Cappavalle* & *Adeliza* "uxor mea, & *Humfridus* privignus meus & "hæres patris ſui, accepta ſocietate Roffenſium "Monachorum pro amore Dei & Sancti An-"dreæ, & ſalute animæ noſtræ, & omnium pa-"rentum noſtrorum, conceſſimus eis omnem "Decimam de *Bugeleia*, ſicut eam anteceſſores "noſtri in eleëmoſynam dederunt, firmitèr & "ſtabilitèr, & quietè perpetuò tenendam, red-"dituris inde annuatim Monachis de *Coleceſtra* "tres ſolidos quamdiù eandem tenent & habere "poterunt: & hanc conceſſionem noſtram præ-"ſenti ſigillo confirmavimus, &c. this was afterward confirmed by *Philip* of *Leiburn* and his wife *Anne*, and *Robert* of *Leiburn* Tenants of *Buggeley*.

The Tithe of *Gedding* was thus granted by the Anceſtors of *Payn* Sheriff of *Surrey*. *Notum ſit*

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omnibus præſentibus atq; futuris quod ego Paganus *Vicecomes* Surregiæ, *do & concedo Decimam de* Geddinges *quam anteceſſores mei dederunt Deo & Eccleſiæ S. Andreæ de* Roueceſtria *pro anima patris mei & matris meæ, & pro me & uxore mea: & mihi conceſſum eſt ab eadem Eccleſia quod poſt obitum noſtrum ſingulis annis anniverſarium mei & uxoris meæ in perpetuum perſolvetur.*

The Tithe of *Stalefield* is granted to the Monks by *D. de Monei*, and *ſic tenendam ſicut tenuerunt de anteceſſoribus meis.*

In 8 *Hen.* 1. half the Tithe of *Halegele* was given to them by *Henry* de *Port*, the other half being before conveyed to them—"Decimam totam "de *Halegele*, de qua (*ſo ſpeaks the Charter*) præ-"dictus Sanctus (*that is S. Andrew*) dimidiam "partem habuerat, cæteram verò pro amore *Ra-*"*dulphi* Epiſcopi, ut prædictum eſt, ſupra taxa-"to tempore donavi: *theſe others alſo follow.*

"*Walchelinus Maminot* omnibus Sanctæ Ma-"tris Eccleſiæ filiis tam poſteris quam præſenti-"bus ſalutem. Notum vobis facio quod Deci-"mam de Dominio de *Bertreia* quam pater "meus pro ſalute animæ ſuæ & ſuorum Ec-"cleſiæ Roffenſi & Monachis ibidem Deo ſer-"vientibus in perpetuam eleëmoſynam dedit, "me ſimiliter pro redemptione delictorum me-"orum & uxoris meæ, & hæredum meorum con-"ceſſiſſe & præſenti ſcripto confirmaſſe. Quod ſi "aliquid de prædicto Dominio in Ruſticanam

" ſervitutem tranſlatum eſt vel fuerit, decima " tamen ſecundum primam donationem integra " permaneat. Teſte *Rodberto* de *Binham* Pres- " bytero, *&c.*

" Omnibus Chriſti fidelibus ad quos præſens " ſcriptum pervenerit, *Willielmus* de *Lamualai* " æternam in Domino ſalutem. Noverit uni- " verſitas veſtra quod ego *Willielmus* de *Lamua-* " *lai* divinæ pietatis intuitu pro ſalute animæ " meæ & uxoris meæ, & liberorum meorum, & " anteceſſorum meorum & ſucceſſorum, conceſ- " ſi & hac præſenti Carta mea confirmavi Deo " & Eccleſiæ S. Andreæ & Monachis Roffenſi- " bus in puram & perpetuam eleemoſynam, me- " dietatem totius Decimæ de Dominio meo de " *Henherſt* quam anteceſſores mei eis dederunt " & conceſſerunt; tenendam & habendam benè " & in pace liberè & quietè de me, & ſucceſſo- " ribus meis, & per manus eleemoſynarii eorum " in uſus pauperum diſtribuendam: ideoque vo- " lo & firmiter præcipio ut prædicti Monachi " habeant, *&c.*

" Omnibus ſanctæ Matris Eccleſiæ filiis ad " quos præſens ſcriptum pervenerit, *Adam* " *Pincerna* æternam in Domino ſalutem. No- " verit univerſitas veſtra, quod ego *Adam Pin-* " *cerna* cognitâ & compertâ dilectione quam " anteceſſores mei habuerunt erga Eccleſiam S. " Andreæ Roffenſis & Monachos in eadem Ec- " cleſia Deo ſervientis, Decimam de Dominico

" Campo

"Campo meo in *Culinges* qui vocatur *Weſtbroc*
"quam *Radulfus Pincerna* eis dedit intuitu Dei,
"prædicti Eccleſiæ, & S. Andreæ, præfatis Mo-
"nachis in puram & perpetuam eleëmoſynam
"conceſſi & præſenti Carta mea confirmavi, ita
"videlicet quod *Richardus* frater meus qui ſuc-
"ceſſit *Gervatio* Decano in perſonatu Eccleſiæ
"de *Culinges* ad præſentationem meam & ſuc-
"ceſſores ſui reddent annuatim, nomine De-
"cimæ illius, præfatis Monachis dimidiam mar-
"cam argenti in craſtino feſtivitatis Sancti An-
"dreæ omni occaſione remota & dilatione, *&c.*
it ſeems that the Parſon of *Culinges* by the Patrons will herein declared, was to have the Tithe of *Weſtbroke* in kind, and pay half a mark for it yearly to the Priory.

"Sciant tam præſentes quam futuri quod e-
"go *Henricus* de *Malemeins* concedo & confir-
"mo Monachis Eccleſiæ ſancti Andreæ Apo-
"ſtoli *Roueceſtriæ* Decimam meam totam de
"Dominico meo & eam vehendam quocunq;
"voluerint & transferendam; cum ante hanc
"conceſſionem ſolummodo granum habuerint.
"Prætereà dono eis & concedo Decimam me-
"am de vitulis & porcellis. Has conceſſiones
"confirmo illis pro amore Dei & ſalute animæ
"meæ & uxoris, & anteceſſorum meorum libe-
"rè & quietè poſſidendas aſſenſu hæredis mei
"& voluntate uxoris & amicorum meorum.
"Teſte, *&c.*

And *William Hachet* confirms the moity of the Tithes of his demeſnes in *Hainwold* (which his anceſtors had granted to the Priory) to hold free *ſine omni moleſtia & exactione*: and warrants them *contra omnes homines ſicut liberam eleemoſynam noſtram.*

A like confirmation is from *William* of *Srambroche* of the Tithe of *Srambroche*, granted formerly from his Anceſtors to the Priory.

William of *Gurnay* had given to the Priory certain Tithes in *Edintune*, which lying diſperſed, were not ſo commodious for the receipt of the Monks as of the Parſon of the Pariſh, thereupon *Galiena*, grand-child to *William*, declares, that for that cauſe *proviſum eſt & ſtatutum, ut quælibet illius Eccleſiæ perſona nomine Decimarum illarum liberaliter ſolvent annuatim prædictis Monachis* Roueceſtriæ *quinque ſolidos, ad feſtum beati Andreæ*: and ſo confirms both the gift of her Anceſtor and this compoſition between the Parſon of *Edintune* and the Prior and Covent.

Haimo filius *Guidonis* de *Dudindale*, confirms, *in puram & perpetuam eleemoſynam*, the gift made by his anceſtors *Gerold* his grand-father, and *Guy* his father, of all the Tithes of his land in *Dudindale*: which was afterward confirmed alſo by his ſon and heir *John*.

Hamelinus de *Columbeirs* eſtabliſhes the perpetual right of all the ſmall Tithes of his Demeſnes, in the Chantor of the Priory, to whom by

by ancient poſſeſſion of his Predeceſſors, he found they belonged, when controverſie was about them, 'twixt the Chantor and *Ralf* Parſon of *Frendesbury*.

William the ſon of *Thomas* of *Tsfield* and all his coparceners, confirm the Tithes of *Tsfield* formerly given by their Anceſtors *in puram & perpetuam eleemoſynam*: and further grant all ſmall Tithes of *Tsfield*, as of Lamb, Calf, Piggs, Fleece, and the like. *Et ut hæc noſtra donatio* (ſays the Deed) *& confirmatio inconcuſſa permaneat, ego* Willielmus *omnium fratrum meorum voluntate pro omnibus ſigilli mei appoſitione corroboro:* which I note for the ſpecial kind of ſealing with the eldeſt brothers ſeal only.

Henry of *Tuange* confirms to them *Decimam de* Tuange *quam præfati Monachi habent de dono* Smalemanni *avi mei tam in* Tuange, *quam in* Rundel.

Theſe Grants or arbitrary Conſecrations were all divers years before the end of M. C. C. after Chriſt, and for the moſt part in the times of *Henry* the firſt, King *Stephen*, *Henry* the ſecond, and *Richard* the firſt: neither need you make doubt of the allowance of them by the Clergy of that time. The Tithes ſo arbitrarily given by Lay-men were not only poſſeſſed by the Priory, but were alſo afterward, with others which are not mention'd in the Chartulary, ſolemnly confirmed to them by the Archbiſhops

of *Canterbury* with their Prior and Covent, who ſupplied that which now is the Dean and Chapter: for in 23 *Hen.* 2. upon a controverſie ariſing about ſome Tithes challenged by the Priory, a confirmation was given by *Richard* Archbiſhop of *Canterbury*, in which he grounds their right upon the Deeds of the Grantors. *Cognito* (are his words) *jure prædictorum Monachorum per inſpectionem inſtrumentorum ſuorum, conſiderata etiam diuturna illorum poſſeſſione, &c.* and then he confirms to them all the Tithes granted to them within his Dioceſe, and reckons by name ſeveral Tithes in VIII. Pariſhes, moſt of which occurr in thoſe examples; After which he confirms alſo their appropriated Churches with Tithes belonging to them. For Tithes given with the Churches appropriated they had as belonging to thoſe Churches: but others ſeverally conſecrated were no otherwiſe in them than as if Rents or other profits had been granted out of lands to them. A like confirmation was made by *Baldwin* in 1 *Rich.* 1. of all Tithes in particular that were formerly ſetled in them by Lay-mens grants. And another ſuch was by *Hubert* Archbiſhop in 1. of King *John*, wherein he confirms to them *Omnes Decimas a quibuſcunque Dei fidelibus uſque in præſens in Archiepiſcopatu noſtro illis collatas.*

Out

Out of the Chartulary of the Monaſtery of * Reding *for* Leonminſter *or* Lemſter *in* Herefordſhire, *that was annext by* Henry *the firſt to* Reding, *in the foundation.*

* *In jam memorata Bibliotheca.*

Walter Clifford, for the health of his fathers ſoul, and for his wife and children, gives *Eccleſiæ de* Leonminſtre *Decimam de tota* Hameneſca *tam de dominio quam de villanis s. de omnibus, unde Decimæ dantur tam de vivis quam de mortuis.* But the Church of *Lemſter* is called there the Mother-Church of the place. This was about King *John*'s time. And *Robert Malherbe* gives to the ſame Church *Decimam de toto dominio meo de* Riſebury *de omnibus, unde Decimæ dantur tam de vivis quam de mortuis.*

Out of the Chartulary of the Nunnery of * Clerkenwell.

* *Ibidem.*

Among many poſſeſſions confirmed to it by *Henry* the ſecond, we find, "Ex dono *Gaufri-*
"*di* Comitis de *Eſſex* & *Euſtaciæ* uxoris ejus to-
"tam Decimam totius victus & procurationis
"illorum & domus ſuæ & familiæ ſuæ; *and*, Ex
"conceſſione *Alexandri* Prioris & Monacho-
"rum Eccleſiæ Sanctæ Mariæ Magdalenæ de
"*Stanesgate*, aſſenſu conventus Eccleſiæ Sancti
"*Pancratii* de *Lewes*, omnes Decimationes illa-
"rum

"rum de feodo de *Clerkenwell* cum pertinentiis "ſuis.

And *Maurice* of *Totham* and *Muriel* his wife grant to the Nunnery, "Jus parochiale in per- "petuo habendum in terris noſtris quas habe- "mus & tenemus de Epiſcopo *Londinenſi* juxta "*Londoniam*, & in hominibus in eiſdem terris "exiſtentibus & in certis terris noſtris quæ ad "Parochiam pertinent. And further, that thoſe Lands and his Tenants ſhould be joined *Jure Parochiali* to the Church of the Nunnery, "Et "quod homines illi reddant & faciant quæ Pa- "rochiani debent reddere & facere ſuæ Matri "Eccleſiæ. And that the Nuns ſhould quietly enjoy all Tithes of thoſe Lands, according to the intent of the Grant from the Priory of *Lewes* in *Suſſex*; which alſo is remembred elſewhere in the ſame Chartulary.

Maude of *Mandevill*, Counteſs of *Eſſex* and *Hereford* grants, "Totam Decimam totius vi- "ctus noſtri & familiæ noſtræ ubicunque fueri- "mus, de panibus & potibus & carnibus & eti- "am de Piſcibus ſicut in Carta Domini *G. de* "*Mandevilla* Comitis *Eſſexiæ* anteceſſoris no- "ſtri continetur. And a great curſe is added to all ſuch as ſhould diſturb or prevent the Nuns in their enjoying of that Tithe. The reference made is to that which is before-mentioned in the Patent of Confirmation, made by *Henry* the ſecond. This of *Maude* was about the

the beginning of *Henry* the third, and is but a confirmation of that of *Geffrey* of *Mandevill*, made Earl of *Eſſex* by *Maude* the Empreſs.

*Out of the lives * of the Abbots of* S. Auguſtines *of* Canterbury, *written by* Thomas Sprot *, *a Monk of the Abbey under* Edward *the firſt.*

* *In Biblioth. Cotton.*

* *Balæo Thomas Spot dictus eſt.*

"Eodem anno Domini (videlicet M. LXX.) "in villa de *Fordwico*, *Willielmus* Rex contulit San-"cto *Auguſtino* & fratribus ejuſdem cœnobii, Ec-"cleſias de *Feverſham* & de *Middeltune*, & Deci-"mas de omnibus redditibus provenientibus ex "illis duobus Maneriis S. de *Middeltune* & *Faver-"ſham* & Decimam de omnibus appendentibus, "Terra, Sylvis, Pratis, & Aqua, excepta Decima "Mellis & Gabuli denariorum. Et ſunt iſtius do-"nationis ſeptem Cartæ diverſorum Regum præ-"ter iſtam. That *Gabulus denariorum* is rent paid in money. *Scotland* was then Abbot there.

In the ſame Abbots time, *Odo* Biſhop of *Bayeux*, and Earl of *Kent*, gave to the Abbey, "Decimas aliquas quas mei fideles habebant, "id eſt, *Athelwoldus* de tribus villis quæ dicun-"tur *Knolton*, *Tiskenherſt*, *Ringelton*, & Deci-"mam totius terræ *Turſtini*, necnon Decimam "*Osberni* filii *Letardi* de duobus locis, id eſt, "*Bedleſangre*. Decimam etiam *Osberni Pay-"fori* de villula quæ dicitur *Bochland*. Hæc

"omnia (*as the words of his Charter are*) dono, "concedo & confirmo, *&c.* Si quis vero huic "donationi contrarius fuerit, vel aliquam ca-"lumniam ingesserit, æterno anathemate ipso "facto sit reus & Regiæ Majestatis, *&c.* Then the Autor tells us, that afterward *William d' Aubigny* wrongfully took the Tithe of *Knolton* and *Ringelton* from the Abbey, as *Roger* of *Memires* did the Tithe of *Bochland*.

In the year M. LXXIX. *Scotland* being still Abbot, *Herebert Fitz-Ivo* gave to the Abbey, "Decimas quinque Mansionum suarum vel cen-"tum solidos nummorum quod in arbitrio Ab-"batis & fratrum S. Augustini constituit utrum "Decimas ipsas vel centum solidos pro Deci-"mis acceptarent. Those five *Mansiones*, or Farms, or Mannors, were *Olive*, *Ewelle*, *Ospreng*e, *Heregedsham*, and *Langedone*. But this Tithe was afterward (saies *Sprot*) wrongfully detain'd from them by *William Peverell*.

About the same time, Abbot *Scotland* made a Lease of V. *Solings* (that is, *Solins*, or *Selions*, which are made the same with Hides, or Ploughlands, by some * good autority) about *Northbourne* to one *Wadard* for life, reserving rent of XXX. shillings, and the Tithes, of all profits there accruing to himself.

The same Abbot leased for life to *Amfrid Mauclerc* his Land of *Riple*, and of *Alvetune*, upon like condition, that *Mauclerc* should pay to

* Regist. Monasterii S. *Martini de Wallo in Archivis Regis* quæ ad Forum à Regiorum proventuum incremento dictum spectant.

to the Abbey all the Tithes both of thoſe Lands, as alſo of his V. Mannors, *Hortun*, *Legu*, *Ernolton*, *Seeldriſham*, and *Oſlaceſtone*, and alſo all other Tithes of his yearly increaſe whatſoever. "Decimam etiam tam frugum quàm omnium "animalium ſuorum & caterarum rerum.

One *Hugh Fitz-Fulbert* had a Leaſe for life of the ſame Abbot, of two Solings of Land in *Siberteſweld*, whereupon rent of XX. ſhillings yearly was reſerved, and this Condition alſo annexed, "Ut daret etiam Decimam omnium rerum ſua- "rum quas ipſe in dominio haberet.

When *Hugh* of *Trotteſclive*, Abbot there, founded his Hoſpital of S. *Laurence*, among other Endowments, he gave it, "Totam Decimam totius "annonæ de dominio de *Langeport*. This was under King *Stephen*.

And *Anno Domini* M. C.LXXXVIII. "*Rogerus* "Abbas tradidit Prioriſſæ de *Scapeia* Decimas de "*Weſtland* intra Parochiam prædictæ Prioriſſæ "pro quatuordecim ſolidis annuatim reddendis "ſacriſtæ S. *Auguſtini*. What Tithes were *intra Parochiam* of the Prioreſs of *Shepey*, were by former Grant of the owner conveyed to the Abbey.

Out of Peeter *of* Blois *his* * *continuance of the Hiſtory of the Abbey of* Crowland *in* Lincolnſhire.

* In ſepti dict. Bibliott.

At the foundation of the Church, new built

by Abbot *Ioffrid*, in the time of *Henry* the firſt, a great meeting was of the devouter ſort of *Yorkſhire* men ſpecially, and others, to the number of above five thouſand in all: and moſt of them laid ſtones at it, and upon the ſtones, ſome offered Money, ſome the Patronages of Churches granted by Charters, others Tithes of their Lands: as for example, the words are, "Juxta "illum proximum lapidem verſus *Boream* po- "ſuit *Simon* Miles & uxor ejus *Gulana* offeren- "tes Eccleſiæ Decimam de *Morton*, & de *Schap- "wik*; & juxta illos proximum lapidem verſus "*Boream* poſuit *Reinerus* de *Bathe* Miles & uxor "ejus *Goda* offerentes operi Decimam de *Houtona* & de *Birtona*.

* *Ibidem.*

Out of the * *Lieger-Book of the Abbey of* S. Albons *in* Hertfordſhire.

The Abbot and Covent, about 20 of *Henry* III. gave to the Church of the holy Trinity *de Boſco*, and the Nunns there, for ever, *Totam Decimam de dominio noſtro de Cayſho in omnibus rebus de quibus Decimæ dari ſolent*, and two parts of the Tithe Corn of the Pariſh of *Watford*, and ſome other moieties of Tithes, the reſt being in the Parſon of *Watford*. But that of the demeſnes of *Cayſho* was newly now created, and expreſſed for the proviſion of apparrel for the Nunns. But this being ſo long after the Conſtitution of *Lateran*, and being made

made only out of their demeſnes which perhaps they had diſcharged, doth only give an example among many, of another original way of creation of tithes in ſome Monaſteries, but not ſo much add to, or confirm the arbitrary courſe of diſpoſition of them by Lay-men in times before that ſo frequently uſed.

"Henricus Rex Angliæ R. Epiſcopo Dunel-
"menſi & omnibus Baronibus ſuis ſalutem: ſci-
"atis me (*it is* Henry *the firſt*) dediſſe Deo &
"S. Mariæ, & S. Oſwino, & Abbati de S. Al-
"bano, & Monachis de *Tinemuth* omnes Deci-
"mas ſuas per *Northumberland* quas Robertus
"Comes (*that is* Robert *of* Mowbray *Earl of*
"Northumberland, *who in time of* William *the*
"*ſecond founded the Priory of* Tinemuth) & ho-
"mines ejus donaverant eis, ſcilicet * Decimas
"de *Colebrige*, & illas de *Ovinton*, & de *Wylun*,
"illas etiam de *Neuburn*, & illam de *Diſcington*
"& de *Calverdon*, & de *Elſtwic*, & illas etiam
"de *Bothall*, & de *Werkwrth*, & de *Anebell*, ſi-
"militer & de *Roubyrie*, & de *Wulloure*, & volo
"ac præcipio quatenus ſuprædictus Abbas &
"Monachi de *Tinemuth*, benè & integrè ha-
"beant illas ac liberè teneant in mea pace, &
"quod nullus eis inde aliquid auferat ſuper me-
"am forisfacturam. *T. Nigello* de *Albeñ.* apud
"Brantonam.

* Videſis *Cart. Antiq. B. B.* 14. & 15. *&c. in arce Lond. & G.* 21. *in Dorſo.*

By the ſame King. H. Rex Angliæ *Ranulpho*
"Epiſcopo Dunelmenſi, & *Alfrico* & *Luilio*

"Vicecomitibus ſalutem. Sciatis me conceſſiſ-
"ſe & dediſſe Deo, & Sanctæ Mariæ, & S. Of-
"wino, & Abbati de S. Albano Decimas quas
"*Hubertus* de *Lavall* ante dederat Monachis de
"*Tinemuda*, ſcilicet de *Setona* & *Calverdona*,
"& de *Diſcingtona*, & volo ac præcipio ut benè
"& integrè in mea pace teneant eas, & quod
"nullus ſuper eis injuriam faciat. *T. Nigello* de
"*Albeni.* apud *Wintoniam.* This was either a confirmation of a conſecration made by *De Lavall*, or elſe a giſt of Tithes out of the ſame lands, by the King, after ſome eſcheat or other new title accrued to the Crown. The Church or Priory of *Tinemuth* was given to the Abbey of S. *Albons* by *William* the ſecond, after *Robert de Monbray* had forfeited the Patronage, among the reſt of his eſtate, by treaſon.

Henry the ſecond confirms to the Monks of *Tinemuth* all their Churches appropriated, and *Decimas de* Corebriga, *&* Newburna, *&de* Wertewrtha, *&de* Rodbiria, *&de* Botala *&* Whonera, *&de* Wylum *&* Ditentona, *&de* Calverduna, *&de* Alſwicha, *&de* Anibella, *&* Decimas *de Dominio de* Herth, *&de* Setona, *&de* Tuneſtal, *&de* Daltona, *&de* Mideltona, *&de* Ovinthuna. All which were, without Churches, formerly and in perpetual right conſecrated by the owners devotions: the like often occurrs in confirmations made to them by the ſucceeding Kings.

In

In 7 Rich. 1. Hugh *of* Pudſey *Biſhop of* Durham, *confirms to the Monks of* Tinemuth, Om-"nes Decimas & obventiones tam in blado "quam in aliis decimationibus, tam de domi-"niis Regis quam Baronum, ſive aliorum fide-"lium & propriarum villarum, & dominiorum "tam in *Northumbria* quam in *Haliwarchfolk* (*that is in the Territory of the Biſhoprick of* "*Durham*) ita plenariè & liberè poſſidendas, "ſicut eas pleniùs & meliùs habuerunt vel habe-"re debuerunt, tempore noſtro vel anteceſſo-"rum noſtrorum, & ſicut donatorum Cartæ "teſtantur. And ſome other Churches of ſuch general ratification they have from the Archbiſhop of *York*.

In the inſtrument of foundation of the Cell of *Belvier*, made between Abbot *Paul* and *Robert* of *Belvedier* or *Belvier*, or *de pulchro viſu*, that *Robert* grants it the Tithes of all Lands that he ſhould hereafter purchaſe. *Omnium terrarum quaſcunquè per Dei adjutorium & conceſſum Regis in ſuum dominium adquirere, quoquo modo poſſet, dedit & conceſſit Decimas eidem Eccleſiæ ſanctæ Mariæ*; that is to the Cell; which was at firſt purpoſed for a Pariſh Church, but by advice of Archbiſhop *Lanfrank* was converted into a Cell. *Dedit etiam & conceſſit Decimas Vinearum ſuarum omnium & ſedem molendini in proxima aqua, & conceſſit Decimas decem villarum ad præſens, ex ſuo videlicet dominio annonæ, omniumque rerum de*

de quibus Decima danda eſt & datur, ſemota quidem tertia parte Presbyteri ville. The names of the Mannors or Towns of which he thus gave two parts of the Tithes, are *Horton*, *Fraton*, *Saperton*, *Riſbendon*, *Stoches*, *Wiberteſton*, *Segeton*, *Medburne*, *Wiwell*, and *Wlſtaneſtorp*.

Robert of *Piriton* gave to the Abbey, the Church of Saint *Marie* that he had built in *Piriton*; and endow'd it with gift of all the Tithe, *ejuſdem ville ſui dominii & omnium ſuorum hominum ibi manentium omnium illarum rerum de quibus recte Decima datur*; And in *Nicenton* he gave all the Tithe of his demeſnes only. In *Cavendeis & Hocaton & Aperſton*, *Decimam dominii ſui*, *excepta cantaria*.

Ralf of *Limeſi* gave to the Church of Saint *Marie* alſo that he built in *Piriton*, *Decimam ſuam in eadem villa*, &c. *& Decimas hominum ejuſdem ville ipſis libenter concedentibus*. *Apud* Nicentonam *dedit duas partes Decime ſue*, &c. *apud* Hulferlea *dedit ſimiliter duas partes Decime ſue & apud* Epreſtunam *ſimiliter & apud* Cavendeis & Hocktentunam. And theſe endowments are there called *beneficium Eccleſie*. Theſe and other Tithes ſo ſeverally granted are confirmed to the Abbey by *Alan* de *Limſey*, *Gerard* de *Limſey* and others of the poſterity of *Ralf*. The Tithe of the Agiſtment of *Bibeſworth*-wood, alſo was granted by *Ralf*, and of other Agiſtments, with proviſion alſo, that if the woods were aſſarted

ted or improved by culture, the Abbey ſhould have Tithe in kind of the improvements. The whole Deeds of conveyance are there at large: and a Bull of confirmation was long afterward obtain'd from Pope *Alexander* (as I think) the IV.

W. Peverell gives to the Monks of *Hatfield* "Decimam denariorum meorum *de Meldona*, & "rectam Decimam de *Dona* de omnibus rebus de "quibus rectè datur Decima. And then adds Churches of other places *cum Decimis*: that was in *Henry* the firſt's time.

Out of Matthew Paris * *his lives of the Abbots of* S. Albons.

* *In Bibliath. Cotton.*

In the time of Abbot *Paul*, under *Henry* the I. "Data eſt, *ſaith he*, huic Eccleſiæ Decima de *Cun-* "*della*, & Decima de *Rigentona*, & Decima de *Ro-* "*niges*, & de *Brethelham*, & de *Herlaga*, & de "*Thamiſeford*, & de *Cliſtona*, & Decimæ quatuor "villarum iſtarum *s. Hunteſlege*, *Gertheham*, & de "*Brunfield*, & *Redlang*. Et duæ partes Decimæ "villarum iſtarum *s. Sedintona* & *Boctona*. Et "tota Decima de *Trumpinton*, duæ partes Deci- "mæ de *Wacerleia*. Porro in *Hertfordſira* duæ "partes Decimæ de *Eſenden* & *Beiford*, & de "*Hertfordingbirie*: and other like.

* In eadem Biblioth.

*Out of the Chartularic * of the Priory of* Boxgrave *in* Suſſex.

About the year M.C.LXXX. a confirmation is made by *William S. John*, of what had been formerly granted to the Priory by his Anceſtors; and among other poſſeſſions, occurrs "Decima de "*Chienore*, *and* Decima omnium nemorum ſuo- "rum de honore *Halnaci* in paiſſone & venditione, "& aliis exitibus. And this *William* for the maintainance of a fourteenth Monk (there being but thirteen by the firſt foundation) which he added, gave, *Decimam gabalorum ſuorum de* Eſtretintona, and other places: *& ex dono* Petri *de* Hampton *decima molendini ſui*, is related to be theirs.

The ſame *William* in another Charter grants, "In ſubſcriptis Eccleſiis ſcilicet *Walberton*, "*Barnaham*, *Hantoneta*, *Honeſtum*, *Mundeham*, "duas portiones de terris & decimis omnibus "quæ ad ipſas pertinent (*for the third parts were aſſigned by him, and the Biſhop, and the Prior to* "*Vicarages*) & in omnibus præſcriptis Eccle- "ſiis advocationem liberam & præſentationem "Presbyterorum qui in ſua perſona in illis Ec- "cleſiis Deo aſſidue deſerviant, &c. Et reddidi "Decimam Gabulorum de *Stretinton*, videlicet "VIII. ſolidos per annum; and the Tithe of other Rents.

Robert S. John, brother of this *William*, gives

De-

"Decimam omnium gabulorum de *Walberton*,
"& Decimam omnium gabulorum totius vil-
"læ de *Bernham* quam frater meus *Willielmus*
"*de S. Johanne* dedit mihi, ad tenendum in ſer-
"vitio Dei quartum decimum Monachum in
"Conventu *Boxgrave*, quia priùs ſolùm trede-
"cim fuerant. Quod ſi quartus decimus ibi de-
"fuerit, *Tuſtinus* nepos *Duneline* vel hæres ſuus
"colliget & tenebit eas uſque ad annum inte-
"grum; ſi verò ultra; dabuntur pauperibus &
"viduis, & Orphanis duarum villarum. Teſte
"*Willielmo de S. Johanne*, *Waltero* & *Willielmo*
"*Capellanis*, *Rogero Hui*, & *Thoma* filio ſuo, *Ro-*
"*gero de Karſnei*. And a confirmation is there alſo by *William S. John* of the gift (that is of the profits receiv'd by the Lord in money or rent:) which lay indeed properly in the Leſſors grant: and therefore alſo *William* the Leſſor had by another Charter granted thoſe *Decimas Gabuli* to *Robert*, to the ſame purpoſe, which he expreſſes in his Deed of conſecration to the Priory: the Leſſors grant to him, the confirmation and his conſecration were enough to ſetle this Tithe-rent in the Monaſtery: but clearly this could not have diſcharged any former right of Tithes in kind payable out of the Land.

The Churches of *Walberton* and *Bernham* and the reſt before named with others, were, with the belonging Tithes, appropriated to the Priory, but the Tithes alone of *Thudeham* and

Kjenor (which they call *Chienor*) were by grant from the Anceſtors of the *S. Johns*, ſetled in the Priory, and never named with any Church, as appears in ſundry Confirmations of them. So alſo is *Decima de* Liperinges, in the ratification of ſuch Grants to them made about that time by *John* and *Seffrid* Biſhops of *Chicheſter* and *Richard* Biſhop of *Canterbury*. Of that Tithe of *Liperinges* ſee more within a few lines.

"Sciant præſentes & futuri quod ego *Richar-*
"*dus* de *Treſgoz* filius *Philippi Treſgoz* dedi &
"conceſſi, & hac præſenti Carta mea confir-
"mavi Deo & Eccleſiæ B. Mariæ de *Boxgrave*,
"& Monachis ibidem Deo ſervientibus pro ſa-
"lute animæ meæ & uxoris meæ & anteceſſo-
"rum meorum, & ut miſſa pro anima mea, &
"uxoris meæ, & pro animabus patris & matris
"meæ, & anteceſſorum meorum, in prædicta
"Eccleſia de *Boxgrave*, ter in unaquaque ſepti-
"mana celebretur, omnes donationes quas ha-
"bent de donationibus *Philippi* patris mei &
"anteceſſorum meorum tam in terris quàm in
"Decimis magnis & minutis, in Manerio meo
"de *Hamptunete*. Et inſuper dedi & conceſſi &
"hac ſcripto autentico confirmavi prædictis
"Monachis de *Boxgrave*, omnes minutas deci-
"mas de prædicto Manerio meo de *Hantunete*,
"ſcilicet in agnis, in vitulis, in pullis, in porcis,
"in aucis, in lanis, in caſeis, in pomis, in fructi-
"bus, & in omnibus aliis rebus undecunque De-

"cimæ

"cimæ Sanctæ Eccleſiæ ſpectant aut provenire
"debent tam majores videlicet quam minores.
"Et ut hæc mea donatio & conceſſio perpetuæ
"firmitatis robur obtineat eam præſentis ſcripti
"teſtimonio & ſigilli mei munimine roboravi.
"His teſtibus *Roberto* perſona de *Storhetune*,
"*Stephano* Capellano, *Philippo Bernhuſe, Willielmo Picoth, Willielmo Purcaz, Philippo de Perham*;
"& multis aliis. This was in the ſame time, under *Henry* the ſecond.

Geffrey of *Colevill* gives to the Priory "Decimam de *Kjenore* de toto dominio meo in
"terris cultis & incultis in Pomeriis in Piſca-
"riis & Molendinis in perpetuam & liberam
"Eleemoſynam ſalvâ tertiâ portione totius De-
"cimæ præfatæ de Dominio meo quæ ad Eccleſi-
"am de *Hidleſham* pertinet cum tota Decima de
"vilanagio meo. Et ut hoc firmiter teneatur,
"ſigillo meo confirmavi hoc ſcriptum his teſti-
"bus *Humfrido de Sartill*, &c.

Robert of *Colevill* grants them "Duas portio-
"ones Decimæ Garbarum de toto dominio meo
"de *Kjenore* in perpetuam & liberam Eleemoſy-
"nam ex donatione anteceſſorum meorum iis
"priùs collatam.

"Sciant præſentes & futuri quod ego *Radul-*
"*phus de S. Georgio* & *Agatha* uxor ejus & *Ala-*
"*nus* hæres eorum dederunt & conceſſerunt
"Deo & *S. Mariæ* & Monachis de *Boxgrave*
"Decimam de *Liparinges* in perpetuam Elee-

"moſynam quam priùs dederat eis *Baſilia* mater "ipſius *Radulphi*. Et ipſi Monachi debent facere "habere Eccleſiaſticum ſervitium in Eccleſia ſua "de *Ichenora* vel in Capella ſua de *Brideham* ho- "minibus prædicti *Radulphi* morantibus apud "*Liparinges*, & in ſingulis Hebdomadis unum ſer- "vitium pro anima *Baſiliæ* & pro cunctis fideli- "bus defunctis donec prædictus *Radulphus* vel "hæredes ſui ibi fecerint quoddam Oratorium, in "quo unus de Capellanis Monachorum faciet "prædictum ſervitium in Hebdomada. Teſtibus "*Ranulpho* Capellano *Ricardo* Capellano de *Box-* "*grave*, *Roberto Legato*, & aliis multis. This was about King *John*'s time.

* In Biblioth. Cotton.

Out of the * *Chartularie of S.* Neots *or* Needs *in* Huntingdonſhire.

"Omnibus Sanctæ Matris Eccleſiæ filiis Se- "*herus de Quincy* ſalutem. Sciatis me conceſſiſſe "& confirmaſſe Monachis S. *Neots* Decimatio- "nes quas antiquitus habuerunt de terra mea in "*Grantſcete*, s. totam Decimationem dominio- "rum quæ fuerunt *Roberti Faſiton* in eadem "villa tam terrarum quam virgultorum. His te- "ſtibus, &c. A like Inſtrument of Confirmati- on from him, is of two parts of the Tithes of *Sub*, and of a third part of the Tithes of *Einſ- burie*, which had been likewiſe formerly ſetled by arbitrary conſecration, in the Monaſtery.

This

This was about the fourth year of King *John*, and was confirmed by the Biſhop of *Ely*.

"Sciant præſentes & futuri, quod ego *Albi-*
"*nus Faſiton* concedo & per hanc Cartam con-
"firmo Deo & Eccleſiæ S. *Neoti* fratribuſque
"meis, ejuſdem Eccleſiæ Monachis, Decimam il-
"lam quam *Robertus Faſiton* avus meus & *Eu-*
"*ſtachius* pater meus eis dederunt & conceſſe-
"runt, s. de terris & pecuniis totius dominii mei
"in *Granteſete* & in *Suho* & in *Weſton* duas par-
"tes Decimæ: & juxta Eccleſiam de *Granteſete*
"unam manſuram quam pater meus cum eadem
"Decima eis conceſſit, &c. Hoc donum factum
"eſt anno quo Rex Angliæ *Henricus* ſecundus
"duxit exercitum apud *Toloſam*.

"Sciant præſentes & futuri, quod ego *Galfri-*
"*dus* filius *Suani* & *Hathewis* uxor mea & *Adam*
"filius noſter conceſſimus Deo & Eccleſiæ ſancti
"*Neoti* & Monachis *Becci* (*this Priory was a*
"*Cell of the Abby of* Bec *in* Normandie) ibi-
"dem Deo ſervientibus, pro ſalute noſtra, duas
"partes Decimæ bladi & omnium rerum quæ
"Decimari debent illius Hydæ terræ in *Croxton*
"quam tenuit *Adelwoldus Flammangus* avus
"prædictæ *Hathewis*, quas ipſe dedit Eccleſiæ
"S. *Neoti* in perpetuam & liberam Eleemoſy-
"nam. T. &c.

"Ego *Robertus Waſte* conceſſi Deo & S. *Ma-*
"*riæ Becci* & S. *Neoto* Confeſſori & Eccleſiæ
"ejus de *Ernelesberia* & Monachis qui inibi de

ſervi-

"ſerviunt, duas partes totius Decimæ meæ de "*Wereſlai* in omni videlicet ſubſtantia mea, in ſe-"getibus & animalibus unde Decima dari debet, "& hoc fieri præcipuè pro anima *Sæni de Eſſeſſa* "& pro ſalute domini mei *Roberti* filii prædicti "*Sæni* qui mihi hanc terram dedit & pro ſalute "*Gonnor* uxoris ſuæ & pro ſalute mea & uxoris "meæ & *Willielmi* filii *Gerei* patris ſui & pro ani-"ma patris mei & matris meæ & fratris mei & "omnium amicorum & anteceſſorum meorum, "*&c.* This was afterward confirmed by the heirs of *Robert Waſle*: but in the Confirmations it appears, that *Torold Waſle* had alſo granted it before *Robert Torold*, I think, was *Roberts* father, and had granted it about *Henry* the ſecond his time.

In the Titles of the Deeds there, is *Carta* Roberti *de* Ferrers *de Decimis de* Benewell: but the Charter it ſelf is wanting.

* In eadem Bibliotheca.

Out of the Chartularie of the * *Hoſpital of* S. Leonard's *in* Yorkſhire.

"*Stephanus* Rex Angliæ Archiepiſcopo *Ebo-*"*rum*, Juſticiariis, Vicecomiti, Baronibus, mi-"niſtris & omnibus fidelibus ſuis *Eboraceſhire*, "ſalutem. Sciatis quia conceſſi & dedi in per-"petuam Eleemoſynam pro anima Regis *Hen-*"*rici*. Avunculi mei, & pro ſalute animæ meæ, "& *Matildis* Reginæ uxoris meæ, & *Euſtachii* fi-"lii mei, & aliorum puerorum meorum Deo &

Hoſpitali

" Hoſpitali Sancti *Petri Eborum* omnem Deci-
" mationem de Theloneo villæ de *Thicahilla* &
" omnem Decimationem Molendinorum ejuſ-
" dem villæ, & præter hæc V. bovatas terræ in
" *Wlnethuat*, & unam bovatam in campo de
" *Bagalaia*. Quare volo & firmitèr præcipio quod
" benè & in pace & liberè & quietè & honorificè
" hanc Eleemoſynam teneant, quicunq; honorem
" de *Thicahilla* habeat, ſicut Eleemoſynam Deo &
" pauperibus Chriſti in perpetuum datam. Teſte
" *Henrico de Eſſex* & *Adam* de *Belin* & *Willielmo*
" de *Clarafai* apud S. *Edmundum*. But in the Bulls of Confirmation from divers Popes made to the Hoſpital, no mention is of theſe Tithes.

*Out of a Ms. of Conſtitutions, * Charters, and Writs, touching the Province and Church of* York.

* *In Biblioth. autoris.*

" *Ael* Dei gratia *Carleolenſis* Epiſcopus. Om-
" nibus ſanctæ matris Eccleſiæ fidelibus in Chri-
" ſto ſalutem, & orationem: Notum ſit omni-
" bus & videntibus & audientibus has literas me
" dediſſe & conceſſiſſe Decanatui *Eborum* & *Wil-*
" *lielmo* Decano & omnibus ejus in Decanatu
" ſucceſſoribus Decimas Molendinorum de *Po-*
" *kelinton* & de dominio meo & de tota ſocha.
" Sic enim proviſum fuit & conſtitutum à Rege
" *Henrico*. Conſtitutum autem & confirmatum
" eſt de omni poſſeſſione debere Decimas dari

"tam in Molendinis quam in rebus aliis, ideoq;
"autoritate Apoſtolicâ & noſtrâ per excommu-
"nicationis ſententiam prohibemus ne aliquis
"has Decimas Molendinorum auferre & dimi-
"nuere præſumat. Regia tantùm dignitate ex-
"cepta, in quam nullam dare præſumimus ſen-
"tentiam. *Valete.* This *Ael* is *Æthelulph*, the firſt Biſhop of *Carleol*, Confeſſor to *Henry* the firſt, who firſt made it a Biſhoprick in M.C. XXXII.

Out of old Charters remaining in the hands of that Noble Knight Sir
Robert Cotton.

Suſſex.

"R. Dei gratia *Ciceſtrenſis* Epiſcopus G. De-
"cano cæteriſque fidelibus Sanctæ Eccleſiæ ſa-
"lutem & benedictonem. Sciatis me conceſſiſſe
"*Brunkino* de *Haſting* dare Decimam ſuam to-
"tam de dominio ſuo de terra quam ipſe tenet
"in Mariſco de *Penenſel* Deo & Eccleſiæ ſancti
"*Martini de Bello* (to the Abbey of *Battell*)
"pro anima ſua & omnium parentum ſuorum
"ſalute. Concedo etiam hanc Decimam & om-
"nes alias Decimas quas ipſi Monachi de *Bello*
"habent in Parochia mea, quatenùs eas liberè &
"quietè teneant & poſſideant imperpetuum abſ-
"que omni moleſtia; videlicet nominatim Deci-
"mam *Vulwini* de *Henam*, Decimam *Sewini* de
"*Glutintune*, Decimam *Lewini* de *Badeherſte*,
"Decimam quam Parochiani Eccleſiæ Sanctæ
"*Mariæ*

"*Maria* de *Bello* dant de *Nedrefelde*, Decimam "quam *Ailricus* de *Ora* dat, Decimam de *He-* "*linfalde* quam ipsi Parochiani Sanctæ *Mariæ* "de *Bello* dant, Decimam de *Boccholte*, & Deci- "mam de *Bromham* quam *Ailwi* & *Æthelida* "dederunt cum filio suo *Benedicto* quando effe- "ctus est Monachus, absque omni calumnia in "perpetuum tenendam. Similiter etiam & om- "nes Ecclesias & Decimas quæ eidem Ecclesiæ "datæ sunt, vel quas eadem Ecclesia & Mona- "chi tenent in Parochia mea, ut eas liberè & qui- "etè teneant Episcopali autoritate confirmo. "Unde vobis & omnibus successoribus vestris & "omnibus Christi fidelibus me eis inde aliquam "molestiam, vi, aut venditione, vel qualibet oc- "casione faciatis, super anathematis vinculo de- "fendo. T. *Henrico* Archidiacono, *Rad.* Ca- "pellano, *Calone* Cantore. Neither the whole name of the Bishop, nor the date, are found in the Instrument. But it appears by the hand, and that *R.* designing the name, to be of the time of *Henry* the first, and made by *Ralf* then Bishop of *Chichester*.

In a Deed of *William* Earl of *Warren* and *Surry*, made in the time of King *Stephen* to the Priory of *Lewes* in *Suffex*, after some immunities given them in all Lands which they held of his fee, this Grant follows: "Dono etiam illis "de omnibus dominiis meis plenariam Deci- "mam, videlicet, de Blado, de Fœno, de Agnis, *Suffex.*

"de Velleribus, de Caſeis, & plenariam Deci-
"mam denariorum de omnibus redditibus meis
"de *Anglia*. Quamvis autem ex illis denariis
"in procuratione mea ſive aliorum quorum li-
"bet expendatur, ex illis tamen plenaria ſupra-
"dictis Monachis reddatur Decima. Et ſi do-
"minium meum aut redditus mei creverint, eo-
"tenùs creſcat & Decima Monachorum. Hæc
"ſuprædicta ego pro ſalute animæ meæ & pro
"animabus anteceſſorum meorum prædictis
"Monachis conceſſi & hac mea præſenti Carta
"confirmavi quando feci dedicari Eccleſiam
"Sancti *Pancratii* (that is, the Priory of *Lewes*)
"& de Decima denariorum de omnibus red-
"ditibus meis de *Anglia* dotavi ipſam Eccle-
"ſiam, & inde ſeiſivi eam per capillos capitis
"mei & fratris mei *Radulphi* de *Warenna*, quos
"abſcidit cum cultello de capitibus noſtris ante
"altare *Henricus* Epiſcopus *Wintonienſis*, Teſte
"*Teobaldo* Archiepiſcopo *Cantuarienſi*, *Henri-*
"*co* Epiſcopo *Wintonienſi*, *Rodberto* Epiſcopo
"*Bath*. *Aſcelino* Epiſcopo *Roueceſtr*. qui eandem
"Eccleſiam dedicaverunt, & Teſte *Edwardo*
"Abbate *Rading*, *Waltero* Abbate de *Bello*, *Wal-*
"*tero* Priore *Cantuarienſi*, *W*.... Archidiacono
"Cant. *Richardo* Decano *Ciceſtr*. *Rodberto* Ar-
"chidiacono, *Johanne* de *Pagham*, *Willielmo*
"Comite *Ciceſtr*. *Rad*. de *Warrenna*, *Reg*. de *War*.
"*Hugone* de *Petrep*. *Radulpho* de *Pleiz*, *Rod-*
"*berto* de *Weſnevall*, *Rodberto* de *Frievill*, *Rod-*
"*berto*

"berto de *Petrep.* *Willielmo* de *Petrep.* *Adam* "de *Puninges*, *Guidone* de *Mercecurt*, *Willielmo* filio ſuo, *Willielmo* de *Droſeio*. The intent of this was to ſettle the Tithes of all his revenues whereſoever through *England*, in the Priory: in kind, of his demeſnes; in money, of his Rents. Neither did he grant only the Tithe of what he then was ſeiſed of, but of all future purchaſe alſo and improvements. That livery of ſeiſin, as it were, made upon the Altar by the Hair of the head both of the Grantor and of his brother, is not without other example of thoſe ancient times wherein both Tithes *a* and other poſſeſſions were ſolemnly conſecrated, either by hair, or a horn, or a cup, or a knife, or a candleſtick, or whatever that might really be delivered on the Altar. For, the form of conveyance in perpetual right, both to the Church and Laity, was to give into *b* the hands of the Grantee or Feoffee ſome ſuch thing, as at this day a Twig or a Turf is in feoffments: or as in Inſtitutions (according to the Formulary of the Court of *Rome*) a Ring is to be given: and the Altar was uſually made the place of ſuch a livery. But in the examples of cutting the hair, eſpecially in this where *Henry* Biſhop of *Wincheſter* doth it, perhaps more was underſtood than only a livery upon the grant: had it not alſo ſome reference to the ancient ceremony of cutting the hair at a Confirmation? which was uſually done by the Godfathers,

a Videſis *App. ad Concil. Lateran. part. 47. cap. 5.*

b *Ingulph. hiſt. fol. 512. b.*

thers, as may be collected out of that of *Adrevald*, where *c* he speaking of *Charles Martell*, says, that *Pepigit hic fœdus cum Luitprando, eiq; filium suum Pipinum misit ut more Christianorum fidelium ejus capillum primus attonderet, ac pater illi spiritualis existeret.* I dare affirm nothing with confidence herein. But it is specially observable that this Charter of the Earl of *Surrey* was not, it seems, made without great advice as well as testimony, both of Clergy and Lay-men: whereto you may add the judgement of *Theobald* Archbishop of *Canterbury*, in his reprehension of *Ala*, Countess dowager of *Warren* and *Surrey*, for not payment of the Tithes of her dowry according to the Grants of the Ancestors of her husband. The original of the admonition to her, speaks thus: "*d* T. Dei gratia Cantuariensis "Archiepiscopus Anglorum primas & Apo- "stolicæ sedis Legatus, Dilectæ filiæ suæ *Alæ*, "Comitissæ *Warennæ* salutem: pervenit ad au- "res nostras religiosorum fratrum *Lewensis* Ec- "clesiæ Monachorum, stupenda querimonia "quòd cum ipsi ex antiqua donatione Comi- "tum *Warrennæ*, videlicet Avi & patris *Wil-* "*lielmi* viri tui, & sui ipsius etiam antequam "Dotem tuam consecuta fuisses, de omnibus "Dominiis Comitis Decimationem Denario- "rum semper inconcussè, tanquam Ecclesiæ suæ "dotem possederint, tu, post perceptam dotis "tuæ investituram, ejusdem fratribus ipsam De- "cimationem,

c *De Mirac. S. Benedicti lib. 1. cap. 14.*

d *In Thesauro Cottoniano.*

" cimationem, quæ ad Dotem tuam ſpectabat,
" ſubtraxeris. Quod ſi ita eſt, vehementèr admi-
" ramur, cum eorum quæ Deo & Eccleſiæ ſuæ in
" eleëmoſynam collata eſſe noſcuntur, nihil doti
" tuæ vendicare debeas nec poſſis. Crudele n.
" eſt & ſacrilegio proximum quod ſuper divi-
" num Altare ſemel devote oblatum eſt, iterùm
" repetere, & ad ſecularia transferre: proinde
" tibi ſalubritèr conſulimus, & in Domino ad-
" monemus quatenus ſicut vis jus tuum tibi à
" Deo liberè conſervari, ita jus ſuum cum inte-
" gritate Monachis relinquas: & nullatenus da-
" tam eis denariorum decimationem dotis tuæ
" retineas; alioquin eis in juſtitia deeſſe non
" poterimus, cujus debitores omnibus exiſtimus.
Although he ſpeaks only of the *Decimatio denariorum*, yet in regard that he mentions it with *de omnibus Dominiis Comitis*, it cannot be well underſtood otherwiſe than of all the Tithes of the Earls poſſeſſions, according to the former grant.

Richard de *Muchegros* about King *Johns* time, confirms to the Abbey of *Perſore* two parts of the Tithes which was wont to be paid to it out of his land of *Wlhaueſhulle, tam bladi quam lini & fœni* (*exceptis linis Curtilagii mei de Dominico meo de* Wlhaueſhulle) as alſo the third part of the Tithes of his Tenants there, and further grants them *Duas partes decimarum bladi de omnibus aſſartis meis ibidem de novo factis & de omnibus*;

nibus assartis per me vel per hæredes meos in posterum faciendis, &c. this is sealed: the seal is circumscribed with ✠. *S. Richardi de Wlhaueshulle.*

W. *Prior* of *Lewes* in *Sussex* gives in 44 *Hen.* 3. for ever to the Priory of *Southwark*, *Decimas quas habuimus de Dominico* Henrici de Holeghe *apud Rerygate*, reserving yearly two shillings and six pence to be paid for them to the Sacristein of the Priory of *Lewes*. How could this Tithe have been in the Prior of *Lewes* to have granted, without a precedent consecration from *Holeghe*, or some other, from whom he had derived his estate?

"Willielmus Dei gratia Wintonienſis Epi-
"ſcopus, Stephano Archidiacono, & omni
"Clero *Surreiæ*, & Baronibus, ſalutem & bene-
"dictionem. Notum ſit vobis quod *Siwardus*
"de *Ealdeſtede* venit, me præſente ad *Sudwer-*
"*chiam*, ibique ſuper Altare divina præventus
"gratia obtulit Decimam de *Hludebrake* Deo &
"ejuſdem genitrici & Virgini Mariæ, & Ca-
"nonicis ibidem Deo ſervientibus perpetuali-
"ter, & hoc meo conſenſu. Quare jubeo ex
"parte Dei & mea ne quis eam retineat vel ab
"eadem loco auferat, vel poſſidentes illam per-
"turbet. Si quis vero citra hoc præceptum
"quicquam inde facere præſumpſerit, perpetuo
"anathemate feriatur. Cujus rei teſtes iſti ſunt,
"*Henricus* de *Twin*, *Stephanus* Archidiaconus,
"*Livingus* de *Coleces* Canonicus, *Rogerus* Ca-
"nonicus,

"nonicus, *Helias* Dapifer, *Johannes* Capellanus,
"*Richerius*, *Vitalis* de *Wicford*, *Gozo* Clericus
"de *Micheam*, *Oſwardus* Monetarius, *Walcheli-*
"*nus*. This was in the time of *Henry* the firſt, *William Giffard* being then Biſhop of *Wincheſter*: the ſeal remains to it.

"*Willielmo* Dei gratia Norwicenſi Epiſcopo,
"Archidiaconiſq; ſuis de *Sudfolc*, omnibuſq;
"ſanctæ Matris Eccleſiæ filiis, *Galfridus* filius
"*Roberti* & uxor ſua *Anneis* in Domino ſalu-
"tem: ſciatis nos conceſſiſſe Eccleſiæ Apoſto-
"lorum Petri & Pauli de *Gipeſwico*, & Canoni-
"cis Regularibus ibidem Deo ſervientibus in
"perpetuâ eleemoſynâ Decimam molendini de
"*Hagenford*, ſcilicet VIII. ſolidos annuatim,
"duos ad Nativitatem Domini, duos ad Pa-
"ſcha, duos ad feſtivitatem S. Johannis, duos
"ad feſtivitatem Sancti Michaelis, & dimidiam
"marcam argenti de *Fachendune*, & Decimam
"fœni, & omnia quæ habent infra villam de
"*Broches*, & extra ad eam pertinentia tam in
"terris quam in Decimis & redditibus, & in
"omnibus libertatibus datis prædictis Eccleſiæ
"à prædeceſſoribus & parentibus noſtris, &c.
Under King *Stephen* it was made; and hath a ſeal annext.

Out of an Original Charter *of* K. Stephens, *made to the Priory of* Eye *in* Suffolk. *It was in the hands of that Learned and Honourable the* L. William Howard. *I had the uſe of it through the courteſie of that Noble Knight* Sr. Robert Cotton.

Quoniam, divinâ miſericordiâ providente, cognovimus eſſe diſpoſitum, & longe lateq; prædicante Eccleſia, ſonat omnium auribus divulgatum, Quod eleëmoſynarum largitione poſſunt abſolvi vincula peccatorum, & adquiri cœleſtium præmia gaudiorum: Ego ✠ *Stephanus* Dei gratia Anglorum Rex, partem habere volens cum illis qui fœlici commercio cœleſtia pro terrenis commutant, Dei amore compunctus; & pro ſalute animæ meæ ✠ & patris mei, matriſq; meæ, & omnium parentum meorum ✠ & anteceſſorum meorum Regum ✠ *Willielmi* ſcilicet Regis Avi mei ✠, & *Willielmi* Regis Avunculi mei ✠ & *Henrici* Regis Avunculi mei, ✠ & *Rotberti Malet*, & conſilio Baronum meorum, concedo Deo & Eccleſiæ *Sancti Petri* de *Eia* & Monachis ibidem in Dei ſervitio congregatis, ut habeant omnes res ſuas quietas & liberas ab omni exactione, & teneant eas in Terris, in Decimis, in Eccleſiis, in omnibus poſſeſſionibus ſicut unquam melius & honorabilius tenuerunt tempore *Rotberti Malet*, & tempore meo antequam Rex

Rex eſſem; cum *Soca* vel *Saca*, & *Tol* & *Tiem* & *infanganathief*. ⊣ Præcipio etiam ut teneant de quocunq; tenebant (& non mittantur in placitum) ſicut tenebant die qua *Henricus* Rex fuit vivus & mortuus, & die qua ad Regni Coronam perveni. Sit etiam ipſa Eccleſia in meo Dominio cum rebus ſubſcriptis. Concedo Eccleſiam de *Holeſte*, de *Dinevet*. de *Bordenis*, de *Suttun*, de *Stadebroc*, de *Wingefel*; Et mercatum & theloneum de *Oreford*: præter navium quæ pertinent ad firmam de *Donerou* * p p + X X X. ſol. Eccleſiem ipſam ubi Monachi habitant cum terris ſuis; Decimam de *Eia*, Duodecim ſolidos de foro, unam feriam per quatuor dies ad feſtum *Sancti Petri* Kalendas Auguſti, nulluſq; in feria habeat poteſtatem niſi Monachi & homines eorum, & omnes illuc venientes & indè redeuntes habeant meam firmam pacem, nulluſq; eos in aliquo diſturbet ſuper X. libras ſorisfacturæ. ⊣ Habeat etiam Eccleſia eandem libertatem de Epiſcopo, de Archidiacono, de Decano, quam habuit à tempore Regis *Eadvardi*, & à tempore *Eadrici* de *Lexefelda* & Regis *H.* ✠ Sitq; de Priore ponendo & removendo ſicut conſtitutum fuit in tempore *Rotbeati Malet*. ✠ Habeat etiam omnes Decimas de Maneriis ſicut habuit in tempore *Rotberti Malet*, ſcilicet de *Eia*, *Stedbroc*, *Radingefeldia*, *Dinevet*. *Tatinget*. *Bedingham*, *Keleton*, *Oleſcia*, *Leeſt*. *Donewic*, *Leſſefeld*, *Bergebi*, *Willebarn*, *Seggebroc*.

* *Forte* propter.

Colum. Cave. ✠ Concedo etiam Eccleſias has, *De Beweſcia*, *Seggebroc*, *Bergebi*, & Eccleſias de *Donewico*, quæ factæ ſunt & faciendæ. De *Bedingeham*, *Leſſefeld* & *Presbyterum* ejuſdem villæ, & de omnibus meis ſilvis Decimam paſnagii. Piſcariam etiam de *Wells*. Atq; totam *Bedefeldiam*, *Storas*, *Pelecoc*, *Fraſingefeld*. Hoc etiam terræ quod habebant tempore *Rotberti Malet*: in *Bedingeham*, & omnia inconcuſsè teneant. Concedo etiam Eccleſiam *Sancti Botulfi* de *Ica* cum appendiciis ſuis quam dedit *Willielmus* de *Rovill*, & *Beatrix* uxor ejus, & terram *Godem*: de *Iakl.* & ea quæ habebant in *Donewico* eodem *Rotberto* vivente. ✠. Horum igitur ſupradictorum *ſocam* & *ſacam* in omnibus concedo, & nominatim in *Donewico* & Decimas meorum hominum; *Walteri* ſcilicet *Arbaleſtarii*, & Eccleſiam Sancti MARGARETÆ de *Halegſtowe*, & terram quæ ei pertinet. Decimam quoq, *Rogeri* filii *Walteri* de *Huntingefeld*, & de *Benges*, *Ricardi Houeell* de *Wiverdeſt*, *de Geſlingeſh*, *Richingehal*, *Reindun*: Decimam *Hugonis* de *Alvilario* in *Brom*, & in *Selſhangers*, & hoc quod *Alvinus* Presbyter tenet de eo in *Beris*. Decimam *Willielmi* de *Rovilla* in *Clakſtorp*, & in *Glemeham*, & de XXX. acris quas tenet *Willielmus Bole* de feudo Comitis *Brittanniæ*: Decimam *Willielmi Gulafri unchennel*; Decimam *Petri* de *Bedingefeld*; Decimam de *Pleeford*, & Eccleſiam villæ & *Alauricum Delſen* cum ſua terra; Decimam

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Hernaldi filii *Regeri* in *Witingeham* & *Aſchetun*; Terram *Osberti* de *Cratevill* in *Acolt*, & hoc quod *Benedictus* Capellanus tenebat de *Rotberto Malato* in Decimis, & rebus aliis; Decimam *Will. De peſenhale*; Decimam *Jordani de VVilebehe*; V. ſol. *De pæxtenhahe*, quos *VVill. de Rovilla* dedit; III. ſolidatas quas tenet *Johannes* filius *Rotberti*; Terram *Alwini* filii *VVulſtan* in *Bedeſeld*; VII. ſolidatas quas tenet *VVulmar* Presbyter de *Codenham*; Decimam *Hunfridi* filii *Unvei*. Decimam *Radulfi Groſſi* de *Gretinges*. XII. ſolid. de Aquitantia in *Aldeſen*; Terram *Wulmari* in *Akeſleia*; Et, præter hæc ſupradicta, concedo eis quod Decima eorum de *Donewico* creſcat quoque anno in denar. & hareng. & in omnibus aliis rebus ſecundum hoc quod redditus mei ibidem creſcent. Teſte *Nig. Elienſi* Epiſcopo, & *Roger*. Cancellar. *Henrico* nepote Regis *Stephani*; *Galer*. Com. de *Mell. Rotberto* filio *Rich. VVill. Mart. Adam De Beln. Johan.* Mareſc. *Hubert. Demunc. Johan.* filio *Roth.* Vicecom. *Gauffred* fil. *VValt. VVill.* fil. *Roz. Heru.* de *Glavill. Rich.* de *Alenc. Roger* de *Hoſa*. Anno ab Incarnatione Domini M. C. XXXVII. apud EIA ſecundo Anno regni mei, in tempore *Ebrardi* Epiſcopi *Norwicenſis*, & *Gauſleni* Prioris *Eie*. Ipſe Rex ſubſcripſit. *Euſtachius* filius ejus ſubſcripſit. *Mutildis* Regina ſubſcripſit. *VVillelmus Cantuarienſis* Archiepiſcopus ſubſcripſit. *Turſtanus Eboracenſis*

Archiepiscopus subscripsit. *Alexander Lincoln.* Episcop. subscripsit. *Henricus Winton* Episcopus subscripsit. *Johannes Roffensis* Episcopus subscripsit. *Eurardus Norwicensis* Episcopus *Simo Wigornens.* Episcopo subscripserunt. *Rotbert. Herefordens.* Episcopus & *Rotbert. Badonens.* Episcopus & *Gislebertus Londonens.* Episcopus subscripserunt. Quicunque aliquid de his quæ in hac Carta continentur auferre aut minuere, aut disturbare scientèr voluerint, autoritate Domini omnipotentis Patris & Filii & Spiritus Sancti & Sanctorum Apostolorum & omnium Sanctorum sit excommunicatus, Anathematizatus, & à consortio Domini & liminibus Sanctæ Ecclesiæ sequestratus donec resipiscat & Regiæ potestati XXX. libras auri persolvat: Fiat. Fiat. Fiat: *Amen. Amen. Amen.* It is the fairest hand and largest Charter that ever I saw of that age, and the Seal is yet hanging to it. And in a Roll * of the Benefactors of that Monastery, very many are mentioned for their Donors of Tithes, or two parts, or third parts, of divers Mannors.

* *In Biblioth. Cotton.*

Out of the Cartæ antiquæ *among the Records of the Tower of* London.

When King *Henry* the second, and Pope *Alexander* the third, dissolved *a* the number of the Nuns of *Ambresbury* in *Wiltshire* (by reason of their unchastity) and fill'd the Nunnery with others

a Vide G.G.7. & F.1. & B.8. & par.1. Cart. 1 *Joh. membr.* 20. *chart.* 117.

others out of thoſe of *Font-Everard* in *Normandy*, divers Churches and Pariſhes were annext, by Grant and Confirmation, to the new Company, and alſo Tithes ſeverally, as *Decima de* Fortesbiria, *& de* Wadhulla *&c. & Manerium de* Etona *cum Decima de dominio & medietate Decimæ ruſticorum*, *& Manerium de* Chelſtamſtona, *cum Decima ejuſdem Manerii*, *&c. & Decimam de* Ingafelot *& de* Godingeflot, *cum omni jure Parochiali & Decima de* Hamſteda, *cum omni jure Parochiali*: and divers other ſuch.

Henry the ſecond grants and confirms to the Monks *b* of *Thetford* in *Norfolk*, *Decimam de* Bradleia, *Decimam de* Offitona, *Decimam* de Florendona, *Decimam de* Moledona, and many other ſuch, without mention of Churches or Chapels, with them; yet in the ſame Charter, divers Churches of other places are by themſelves conveyed or confirmed. b G.G. 1, & 2.

William the firſt gives to the Church of *c Weſtminſter*, *Decimam de* Wic *de eadem parte quæ ad me pertinebat, atque iterùm reddidi eandem partem eis injuſtè ablatam quam R.* Edwardus *antea dederat*: Then ſeverally follows divers Appropriations of Churches. This was in the ſecond of his reign. c C. C. 3.

Henry the ſecond gives to the Church of *Sarum d* divers Churches with Tithes, and among them, *Eccleſiam de* Durneforda *cum terris & Decimis quas* Walterus *filius* Richardi *&* Iſabella d *Ib.* 3. *in dorſ.*

Iſabella *de* Tœni *& reliqui advocati ejuſdem Eccleſiæ ei dederunt: & omnes Decimas & de* Nova Foreſta, *& de* Panetot, *& de* Bucholt, *& de* Andevera, *& de* Husburna, *& omnibus Foreſtis meis de* Wilteſhire *& de* Dorſeta, *& de* Berkſhire, *de omnibus rebus ſcilicet de firma, de Paſnagio, de Herbagio, de Vaccis, de Caſeis, de Porcis, de equabus & omnes Decimas de omni Venatione predictarum Foreſtarum excepta Decima illius Venationis quæ capta fuerit cum ſtabilia in Foreſta de* Windleſhora, *&c.* What the Biſhop had yearly, by reaſon of this Grant, may be ſeen in *Rot. Clauſ.* 5 *Hen.* 3. *Membran.* 14. And for Grants from the Kings of the Tithe of Veniſon, other examples are obvious, as of the Foreſts of *Eſſex* to the Biſhop of *e London*, by King *John*, and of others anciently, of the *f* Tithe of the Veniſon taken in the Foreſts in *Northamptonſhire*, to the Abbot of *Bury*; to omit that of *Henry* the firſt, his Grant of the Tithe of all his Veniſon taken in *Yorkſhire*, to the Abbot of *York*, which occurs in the *g* Eire of the Foreſt of *Pickering*.

e *Rot. Chart.* 6 *Joh. R.* 6. 107. *memb.* 12 & *Rot.* 11 *Hen.* 3. *part.* 1. *memb.* 5.
f *Clauſ.* 4 *Hen.* 3 *part.* 1 *mem.* 2. & *Clauſ.* 17 *Hen.* 3. *membran.* 4. &c.
g Fleetwood *in Commentar. de jure Foreſtarum.*
h *Cart. antiq.* ff. ff. 2.

In a Charter of *Henry* the firſt, many Tithes are granted and confirmed to the Priory of *Mountague h* in *Somerſetſhire*, as *Duæ partes Decimarum de* Atford, *Decima de* Crimoc, *& medietas Decimarum de* Ciſelberg, *de* Clafford, *de* Northon *juxta* Taunton, *& Decimæ dominii de* Merſton, *& de* Hetecum, *de* Candel, *de* Torp,

Torp, *de* Cernel, *item de* Cernel, *& de tertio* Cernel, *&c.*

Henry the firſt granted *i* to the Canons of *Cambridge*, *Decimas de dominio meo de* Cantebrigia *& Eccleſiam S.* Egidii, *&c.* i K. in dorſ. 35.

About 3 *Hen.* 1. *Manaſſes Arſick* renew'd his Charter to the Abbey of *Fiſchamp* in *Normandy*, and gave them *apud* Sobrinton *de ſuo dominio duas garbas Decimæ ſuæ*, and ſo in divers other Mannors. *Dedit & Decimas de cunctis denariis ſuis & de pullis Equarum ſuarum, de Vitulis, de Ovibus, de Caſeis, de Lana & decimas de omnibus rebus ſuis, & Decimas de omnibus hominibus ſupradictarum villarum.* All which was confirmed by the King. It ſeems, that in *Decimas de omnibus rebus* the Corn was excepted, according to the firſt Limitation of his Grant. k S. 8.

I I. To theſe might be added more out of the Rolls *l* eſpecially of Exemplifications or Confirmations. But the ſtore is large that is already delivered. And to conclude it, obſerve this moſt notable teſtimony in a Writ of the *Regiſter* and in *Fitzherbert*, that had reference to the common uſe of thoſe arbitrary Grants out of demeſne Lands at the owners pleaſure, without underſtanding of which uſe, I ſhall doubt no man throughly underſtands the Writ, nor the true ground of any Writ *de advocatione Decimarum.* It is a ſingular example, and, as I remember, not

l Vide *Rot. cart.* 5. *R. Joh. membr.* 8. *cart.* 61. *& cart. antiq. V. & E.* 7. *& in Faſcicula cart. antiq. num.* 80. *&c.*

ſeconded or ſpecially noted elſewhere in our Law-books; and therefore I tranſcribe it whole.

m Regiſt. orig. fol 36. b. & Fitz. N. B. 40. N.

"Rex *m* tali Judici ſalutem. Monſtravit nobis "venerabilis Pater H. *Lincolnienſis* Epiſcopus, "quod cum I. præcentor Eccleſiæ Beatæ *Mariæ* "*Lincoln.* teneat de dono ſuo omnes Decimas "Dominicarum terrarum ſuarum vel Dominici "ſui de N. quas idem Epiſcopus & prædeceſſo- "res ſui Epiſcopi loci prædicti liberè conferre "conſueverunt: Prior Beatæ *Katherinæ* extra "*Lincoln.* clamans Decimas illas pertinere ad "Eccleſiam ſuam de *B.* trahit eum inde in pla- "citum, &c. Et quia placitum prædictum tan- "git Coronam & dignitatem noſtram; præſer- "tim cum collatio earundem Decimarum ad "nos poſſit devolvi ratione cuſtodiæ vel Eſca- "etæ, quia etiam conſimiles Decimas conferi- "mus in quibuſdam Dominicis, & ſimiliter "quamplures magnates regni noſtri in Domi- "nicis ſuis, vobis prohibemus ne placitum il- "lud teneatis in Curia Chriſtianitatis, nec ali- "quid quod in derogationem Regiæ dignitatis "noſtræ cedere valeat, in hac parte attentetis "ſeu per alios attentari faciatis quoviſmodo. "Teſte, &c. What can the intent of this be o- ther, than that the Biſhop, the King, and many other Grandees of the Kingdome, did uſually grant or collate the Tithes of their Demeſnes; which, becauſe they were ſo grantable at the owners will, were (by the meaning of this Writ) exempted

exempted from the Spiritual Juriſdiction. But thereof more anon. Perhaps the Writ is immediately to be underſtood of Tithes collated in like ſort as a Church; ſo that he which collated them, had *advocationem Decimarum* (which appears alſo in the *Regiſter*) as any other conferring a Church, had *Eccleſiæ advocationem*. If not ſo; whence could the collation of theſe Tithes have original, ſaving only from the making them ſeverally a kind of Benefice (under the name of *Decimæ ſeparatæ*, that is, annext to no Church, as the Marginal note in the *Regiſter* well calls them) by arbitrary Grant at firſt of the owner, no otherwiſe than a Church was made a Benefice to be beſtow'd, by the arbitrary Ordinance of the Patron, at the foundation? Clearly, had not the uſe of conveyance of Tithes ſeverally by Grant, preceded in practice, it could not have been, that *Quamplures magnates regni* (as the Writ ſays) might *Decimas libere conferre in dominicis ſuis*. Tithes alone could never have been collated like a Benefice, had they not been firſt founded or created as a Benefice. And the Writ might ſeem indeed to bear even the character of the time wherein that uſe of arbitrary Grants of Tithes was known, as of common practice; which I underſtand to be about King *Johns* time; and that, before the Popes Decretals, or other authority, had taken away the Lay-mens challenged liberty of granting Tithes ſeverally,

according to the former example. And the rather might that conjecture hold, becauſe alſo the Sigle expreſſing the Biſhops name, is H. which by all likelihood denotes *Hugh* Archdeacon of *Wells*, being L. Chancellor to King *John*, and Biſhop of *Lincolne*. But it may be alſo, that it was had of later time, and at the ſuit of *Henry* of *Lexinton*, made Biſhop of *Lincolne* in 38 *Hen.* 3. and that, after Parochial right was more ſettled. For notwithſtanding the ſettling of it, and making Tithes then payable *de jure communi* to the Pariſh-Rector, yet it is certain, that the former Grants (what through general Confirmations from *Rome*, what through the Lay-mens ſtanding upon their Patronages of Tithes, and upon the Grantees acknowledgement of their firſt devotions in ſuch Conſecrations) ſtill continued, and were ſubject (in caſe the *Advocatio Decimarum* might come in queſtion) to ſuch a Prohibition, until ſome alteration was therein made, as anon ſhall be ſhewed, where we ſpeak of the ancient uſe of the Writ of *Indicavit*. But of what time ſoever the Writ was, it is plain, that the ground of it muſt come from that uſe of arbitrary Conſecrations of Tithes, which ſeverally alſo (as in it is ſuppoſed) made ſometimes a kind of Benefices that might be collated at the will of thoſe who were owners of the Land whence the Tithes were payable. How could Tithes ſeverally be collated by any Grandees, but from ſuch original

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nal examples as are already copiouſly delivered? A like *n* precedent of a prohibition I have ſeen 7 *Ed.* 1. which becauſe it ſo confirms the ancient purpoſe of that in the *Regiſter*, ſhall be here at large delivered. *Edwardus &c. Archidiacono* Wilteſhyr. *& ejus Commiſſariis ſalutem. Cum dilecti nobis in Chriſto Abbas & Conventus de* Oſney *ex collatione progenitorum noſtrorum Regum Angliæ percipiant & percipi debeant, & ipſi & prædeceſſores à tempore collationis illius ſemper hucuſque percipere conſueverint duas partes Decimæ garbarum provenientium de dominicis terris* Edmundi *Comitis* Cornubiæ *in* Harewell, *& quorundam tenentium ſuorum ejuſdem villæ in ſubventionem ſuſtentationis Capellanorum & Clericorum in libera Capella noſtra S.* Georgii *in Caſtro noſtro* Oxoniæ *miniſtrantium*, Rogerus *de* Draytona *Perſona Eccleſiæ prædictæ villæ de* Harewell, *clamans prædictas duas partes ad eandem Eccleſiam ſuam pertinere, trahit ipſos Abbatem & Conventum inde in placitum coram vobis in Curia Chriſtianitatis, ſicut ex relatu pluribus accepimus. Quia verò prædictum placitum tangit nos & coronam noſtram & dignitatem, maximè cum conſimiles decimas in pluribus Dominicis noſtris conferamus, & etiam plures Magnates regni noſtri conſimiles decimas, quarum collatio ad nos ratione cuſtodiæ devolvi ſolet, ſimiliter conferant in Dominicis ſuis, & etiam quia cognitio ſuper jure patronatus hujuſmodi Decimarum ad Cu-*

n In *Codice Ms. Canobii Oſnienſ.* in Bibl. Cotton.

riam noſtram pertinet, tibi vel vobis prohibemus ne placitum illud teneatis in Curia Chriſtianitatis. T. meipſo apud Wodeſtoke *Octavo die Febr. anno regni noſtri ſeptimo.* Here are plainly underſtood whole Benefices of only Tithes, to be collated by the King and divers of his Baronage: as the Tithes of the Kings Garden in *Windſore* are in *o* record, collated by *Henry* the third; and other like ſometimes occurr. Neither is that Canon of the Council of *Weſtminſter* held under *Hubert* Archbiſhop of *Canterbury*, in 2 *Johan.* R. from any other original to be interpreted, than from thoſe common conveyances and grants of Tithes and Church livings generally by Lay-men to Monaſteries. The words are, *p Lateranenſis Concilii* q *tenore perpenſo decernimus ne fratres Templi, vel Hoſpitalis, ſive quicunque alii religioſi Eccleſias vel decimas, vel alia beneficia Eccleſiaſtica, ſine Epiſcopali autoritate de manu Laica recipiant, dimiſſis etiam quas contra tenorem iſtum moderno tempore receperant, &c.* For however, that in the Council of *Lateran*, be interpreted (I enquire not how well) of Tithes only infeodated *r* into Lay hands; yet in this Kingdom, where thoſe infeodations were not, or were very rare (whereof anon more) how can it be well underſtood but of new Grants or arbitrary Conſecrations of Tithes as well not before in *eſſe*, as of others convey'd by Inveſtiture of Churches. But touching thoſe conveyances of Tithes by Lay-men, ſee more

o Pat. 16 Hen. 3. membr. 7.

p Reg. de Hoveden, part. 2. fol. 460. b.

q Vide extr. tit. de Prob. c. in Lateranenſi 31. & tit. de privileg. c. 3. cum & plantave. & in Concil. ipſo, quod plenè tantummodo extat in editione *Romana* & *poſtrema Binii.*

r Extr. tit. de his quæ fiunt à Præl. c. 7. cum *Apoſtolica.*

more in the XIII. Chapter where we ſpeak of Infeodations.

III. Out of thoſe examples of Conveyances and arbitrary Conſecrations of Tithes (being but a few, and as an eſſay only of the multitude of them, which might be found in the Leiger books of other Monaſteries (may eaſily be collected, the truth of thoſe aſſertions in the old year books, which have, without deſert, been taken for falſhoods grounded only upon ignorance. By the practiſed Law, clearly every man gave the perpetual right of his Tithes to what Church he would, although the Canon Law were againſt it; whereof alſo notice, it ſeems, is ſometimes taken in thoſe conveyances which have the words of *Quæ decimari debent*, as if they had ſaid, Tithes of all things which by the Canon Law ought to be tithed, or, *Quæ decimari debent more Catholico*, as the words are in a Charter *b* of about *Henry* the ſeconds time, of *Gilbert* one of the Earls of *Hertford*, to the Priory of *S. Mary Overies* in *Southwark* of the Tithes of *Capefeld*. And it is, like enough, that according to the recitals of thoſe Decretals noted in the former Chapter, in ſome places devotion had bred an obedience to the Canons in this point; but, that it was general through the Kingdome, is moſt falſe: and whatever the Pope wrote from *Rome*, we know the truth by a cloud of home-bred witneſſes. But alſo thoſe words, *Decimari debent* or *ſolent*, ſo often

b In Armario Cottoniano.

often occurring, may be underſtood of ſuch things as uſed to be tithed when Tithes were arbitrarily paid, as among the Gentiles, or Chriſtians, he that offers *de iis quæ offerri ſolent*, intimates not ſo much any neceſſary duty acknowledged by him, as a cuſtome of offering ſuch things, when offerings were arbitrarily made. And although in the book of *Domeſday* it be ſpecially found of one *Stori* an anceſtor of *Walter* of *Aincurt*, that he might *ſine alicujus licentia facere Eccleſiam* (in *Darby* and *Nottinghamſhire*) *in ſua terra & in ſua ſoca, & ſuam decimam mittere quo vellet*, as if it had been his ſingular prerogative, in his poſſeſſions of *Graneby*, *Mortune*, *Pinneſleg*, and other Mannors; yet was that liberty or prerogative aſwell of building Churches as arbitrary conveyance of Tithes not already conſecrated either by deed or preſcription, common, it ſeems, to all Lords of Mannors or large Territories, until about the time of K. *John*. For that of Tithes; the examples and authorities before cited juſtifie it. For the building of Churches (which conſidered with the arbitrary endowments of them with new Tithes, ſpecially belongs alſo to this diſquiſition) it was affirm'd for a common liberty of the Baronage in letters of King *John* to *Innocent* the third, as you may ſee in the Popes anſwer to the King. ſ *Quod enim de conſuetudine regni Anglorum* (ſays the Pope to him) *procedere regia ſerenitas per ſuas literas*

ſ Innocent. 3. Epiſt. Decretal. lib. 1. pag. 228.

terras intimavit, ut liceat tam Epiſcopis quam Comitibus & Baronibus Eccleſias in feudo ſuo fundare; Laicis quidem Principibus id licere nullatenus denegamus, dummodo Diœceſani Epiſcopi eis ſuffragetur aſſenſus, & per novam ſtructuram veterum Eccleſiarum juſtitia non lædatur. It was challenged without licence; but the Pope allows it to the Laity, ſo that they had licence from the Biſhop of the Dioceſe, and withal that the new foundations bereaved not ancient Churches of their aſſigned endowments. But after the time of K. *John*, few or none of thoſe arbitrary conſecrations are found: yet in *Henry* the thirds time ſome were, as you may ſee in thoſe of Fines taken out of the Chartulary of *Gisburn*: but remember alſo they were in the Province of *York*. Neither were thoſe Grants diſallow'd by either Common or Canon Law here then practiſed: and in thoſe [t] caſes of Tithes that occur among the Epiſtles of *John* of *Salisbury*, who lived in the time of *Henry* the ſecond, no title is made meerly by Parochial right; but Preſcription or Conſecration are the grounds whereupon they are demanded: and whereas in the caſe of *Robert Wnegot* before *Adelelm* Archdeadon of *Dorcheſter*, the queſtion was there, *ſuper quibuſdam Parochianis & Decimis*, and the Actor produced teſtimony that he had formerly recovered *jus Parochiale quod petebat cum decimis*; it is clear that the Tithes were not recovered *jure communi*

[t] *Epiſt.* 21. & 84.

as they are at this day belonging to the Pariſh-Rector, but by ſpecial title of Conſecration or Preſcription: and the *jus Parochiale* there, was the right of having the Cure and Offerings of the Pariſhioners, which had not neceſſarily annext to it the right of Tithes by the practice of that time: whence it came that *Parochiani & Decimæ* are both there mentioned as ſeveral demands in the Actors Libell: and hereof ſee more anon in the corollary of the ancient Juriſdiction of Tithes in *England*: and that admonition of *Theobald* Archbiſhop of *Canterbury* (before cited) to *Ala* Counteſs of *Warren*, is obſervable: is it not apparent that he allows not only the arbitrary Conſecrations made by the Earls, but alſo reprehends her ſharply for not performing what they had therein vowed? But in the enſuing times, after that the Canon Law had here gained greater ſtrength, which happen'd ſoon upon *Innocent* the third his thundering out his Interdict againſt this Kingdom, his Excommunication againſt the King, and frighting the ſubjects with his Bulls ſtufft with commination, and that againſt this very point of arbitrary conveyances of Tithes; it ſoon came to be a receiv'd Law, that all Lands regularly were to pay Tithes to the Pariſh or Mother Church according to the proviſion of the Canons: and therefore upon Delegation made by Pope *Innocent* the fourth in 49 *Hen.* 3. to the Priors of *S. Tri-*

" *nity*,

nity, and *S. Bartholomew* in *London*, and the Archdeacon of *Weſtminſter* for the deciding of a controverſie 'twixt the Abbeſs and Nuns of *Chartris* by *Ely*, and *Robert Paſſelew* Archdeacon of *Lewes*, about ſome Tithes of the poſſeſſion of the Nunnery in *Barington*, it appears that in *Paſſelews* libel, no other title is made, but that the Land lies *infra limites Parochiæ ſuæ de* Barenton, *unde petit dictum Abbatiſſam compelli integre ad ſolutionem dictarum Decimarum cum damnis & intereſſe, &c.* and ſome others like are of that time according to the Law that to this day continues, as may eſpecially be found in the books of *u Pipewell* and *Oſney*. That example is in the Chartulary of that Nunnery, compoſed by the coſt and pains of *Agnes Aſchefeld* Abbeſs there, and *Henry Bukworth* Bachiler of the Canon Law, about the time of *Henry* the ſixth. You may add to the confirmation of this ending of the ancienter courſe of arbitrary conſecrations, and the later eſtabliſhing of Parochial right in Tithes, that of the *Engliſh* * Monks before cited touching the general Council of *Lions*, held in 2 *Ed.* 1. I doubt not but that Parochial right was long before for the moſt part ſetled; but it is not likely that they had ſo confidently affirmed ſuch a continuing liberty of conveyance of Tithes at the owners will, had they not known that until about the preceding ages at leaſt, it had been in common practice

u *Ms. in Bibl. Cottoniana.*

* *Sup. cap.* 7. *ſect.* 1.

both of fact and positive Law, especially in this Kingdom where they lived. Whether this petition in Parliament of *6 Ed.* 1. *x* may give any light to that assertion of theirs, I know not. *Nicholas* of *Crainford*, Parson of *Gilingham*, complained to the King, "Quod cum Foresta Domini Regis, ibidem sita, sit infra Parochiam suam, "quod Dominus Rex Decimam fœni, venationis, pannagii, & aliorum proventuum ipsius "foresta de gratia & pro salute animæ suæ, & animarum prædecessorum suorum, Ecclesiæ suæ "cui de jure communi debentur plenè solvi "præcipiat, secundum formam supplicationis & "exhortationis Apostolicæ porrectam Domino "R. apud *Gilingham* quando fuit ibi ad Natale. What was that *supplicatio* or *exhortatio Apostolica?* did not some such thing, coming from *Rome* about the time of the Council of *Lions*, make the Monks think it a thing agreed upon in that Council? it seems here too, that in the Kingscase, Parochial right of Tithes was not yet every where setled, although the Tithes were encreasing in a Parish.

x *Inter fusc. Pet. Parl. 6 Ed. 1. in arct. Lond.*

IV. After this establishment of Parochial right, new arbitrary conveyances out of lands lying in any Parish, were not permitted, but ancient consecrations were still retained, and had confirmation either from prescription or Papal priviledge, which were, by the Canons, sufficient titles to be pleaded against the common right claimed

claimed by Pariſh Rectors. And when this innovation grew in Parochial right, then alſo the juriſdiction which the common or ſecular Law had formerly challenged and exerciſed in detaining the right of Tithes (between the Pariſh and Pariſhioner) grew out of uſe; and the legal proceeding became to be regularly according to the Canons, which brought the practice to be as ſince it hath continued. But of the ancient juriſdiction more anon. So was it now come to that paſs, that no new arbitrary conſecrations might be made of the Tithes of lands lying in any Pariſh. But yet for ſuch lands as were not Parochially limited, the ancient liberty was retained: and although by the Canon Law the Biſhop is to have all Tithes growing in lands not aſſigned to any *y* Pariſh within his Dioceſe, yet in the monuments of the common Laws ſuch Tithes growing in lands of the Crown, are at the arbitrary diſpoſition of the King: ſuch places have *z* been and (I think) are in divers Foreſts. And hereof ſays *Thorp* in 22 *Aſſiſ. pl.* 75. *Il ſoleit eſtre ley quant il aver certane place qui fuit hors de cheſcun Paroche come en* Eng'ewode, & hujuſmodi, *en tel caſe le Roy ad & doit aver les diſmes de ceſt place (& nient l' Eveſque de lieu) a granter a que luy pleſt:* and relates further that the Archbiſhop that year made ſuit to the Council, to have had ſuch Tithes. But, under favour, this was underſtood only of the Kings granting the tithes

y *Extr. tit. de Decimis c.* 13. *quoniam.*

z 14 *Hen.* 4. *fol.* 17. *b.* & *Brook tit.* Diſmes 10.

of his Demeſnes occupied by his Bailiffs according as in ancient time every man elſe did: for whatever the words ſeem to import, *Thorp* ſpeaks only of ſuch lands of the poſſeſſion of the Crown; in which caſe, it muſt not perhaps be underſtood ſo much, a part of the Royal prerogative as a right due to the King by common Law, in regard of his poſſeſſion of lands not limited to any Pariſh. Neither doth he affirm that Tithes of ſuch places are due to be paid to the Crown, but that they are in the King to grant at his pleaſure, if growing in his demeſnes. But to this purpoſe is a notable caſe in the Parliament rolls of * 18 *Ed.* 1. where *Ralph* Biſhop of *Carleol Petit verſus Eccleſiæ Priorem de* Karliel *Decimas duarum placearum terræ*, of the new aſſarts in the Foreſt of *Inglewood*, whereof the one is called *Linthwait*, the other *Kirkthwait*, *Quæ ſunt infra limites Parochiæ Eccleſiæ ſuæ de* Aſpaterike, *&c.* and *lays by preſcription in his predeceſſors the Tithes of the pannage there, before the aſſarting or culture.* *Henry* of *Burton* alſo, Parſon of *Thoresby*, claimed in Parliament the ſame Tithes as belonging to his Church, and *infra limites Parochiæ ſuæ*: and the Prior comes and ſays, that *Henricus Rex vetus* (*Henry* the firſt, it ſeems) *conceſſit Deo & Eccleſiæ ſuæ Beatæ Mariæ* Karliel *omnes Decimas de omnibus terris quas in culturam redigeret infra Foreſtam, & inde eos feoffavit per quoddam cornu eburneum quod dedit Ec-*

* In Recept. Scaccarii, & in Cod. Vet. apud M. C. I. Borough. regiorum in arce Lond. Scriniorum aſſeſſum.

Eccleſiæ ſuæ prædictæ, &c. Whereupon the Kings Attorney, *Dicit quod Decimæ prædictæ pertinent ad Regem & non ad alium, quia ſunt infra bundas Foreſtæ de* Inglewood, *& quod Rex in Foreſta ſua prædicta poteſt villas ædificare, Eccleſias conſtruere, terras aſſartare, & Eccleſias illas cum Decimis terrarum illarum pro voluntate ſua cuicunque voluerit conferre, eo quod Foreſta illa non eſt infra Limites alicujus Parochiæ, &c. Et petit quod Decimæ illæ Domino Regi remaneant prout de jure debent ratione prædicta, &c. Et quia Dominus Rex ſuper præmiſſis vult certiorari, ut unicuique tribuatur quod ſuum eſt. William* of *Veſci*, Juſtice of the Foreſt beyond *Trent*, and *Thomas* of *Normanvill*, his Eſcheator for thoſe parts (for ſo was the diviſion anciently of Eſcheatorſhips) were aſſigned Commiſſioners to enquire of the truth, *& certificent Regem ad proximum Parlamentum, &c.* So are the words of the Record. Where the Attorney challenges not the right by prerogative, but only in regard that the place being the demeſne-land of the Crown, and not aſſigned to any Pariſh, the Tithes are grantable by the King, as owner, at his pleaſure. And ſo it well agrees both with that liberty challenged by King *John* in the name of his Baronage, that they might found new Churches at their pleaſure in their own fees (before the eſtabliſhment of Parochial right in Tithes) as alſo with the more ancient practice of the Kingdom, whereby

whereby Tithes might not be parochially exacted, nor were ſo reputed due, but by the owners arbitrarily conveyed in perpetual right. And whereas *Herle*, in 7 *Ed.* 3. *fol.* 5. *a.* ſays generally, That no man might arbitrarily give his Tithes that are not within Parochial Limits, but that the Biſhop of the Dioceſe ſhould have them; It ſeems he ſpake ſuddenly, as out of the Canon Law, and not according to the Law of *England*. And he adds, that it is againſt reaſon, *Que home ne purra my granter ſes almoignes a que il vouldra*. And but * two years before that of *Herle*, it was adjudged in the Kings Bench, *Quod de Decimis groſſis Priori de* Carleol *& prædeceſſoribus ſuis de dominicis Domini Regis infra Foreſtam de* Inglewood *provenientibus & extra quarumcunque Parochiarum Limites exiſtentibus per Cartam progenitorum Domini Regis nunc conceſſis, & per Cartam ipſius D. R. nunc confirmatis, &c.* a Prohibition ſhould be granted againſt the Biſhop of *Carleol*, that claimed them. It was upon a Record ſent thither out of the Parliament, as in the Roll appears largely. And *Edward* the firſt gave ſuch Tithes of the Foreſt of *Dene*, as encreaſed not within any Pariſh, to the Biſhop of *Landaff*, by which title the Biſhop afterward * claimed them; and no queſtion was of that point. But for common or waſte ground, the Pariſh whereof is not known, the Statute of 2 *Ed.* 6. hath given the Tithe cattel

* *Mich.* 9 *Ed.* 3. Coram Rege Rot. 168. Cambria.

* *Vet. Parl.* 8 *Ed.* 2. *rot.* 17. *in dorſ.*

tell therein depaſturing, to the Church within whoſe Pariſh the owner dwelleth.

CAP. XII.

I. *Appropriations and Collations of* Tithes with Churches. *The Corporations to which the Appropriations were made, preſented, for the moſt part, Vicars. Thence the moſt of perpetual Vicarages.*

II. *How* Churches *and* Tithes *by* Appropriation *were anciently conveyed from* Lay-Patrons. *The uſe of* Inveſtitures, *practiſed by* Lay-Patrons.

III. *Grants of* Rents *or* Annuities *by* Patrons only, *out of their* Churches. *Of the* Biſhops *aſſent. More of* Inveſtitures. *A Writ to the* Archdeacon *anciently ſometime ſent upon recovery of a Preſentment.*

IV. *Of* hæreditary ſucceſſion *in Churches.*

V. Lapſe *upon default of Preſentation grounded upon the general Council of* Lateran, *held in* 25 Hen. 2. *What* Præſentare ad Eccleſiam *is originally.* Donatio Eccleſiæ.

I. AS by *Conſecrations* ſeverally, ſo, with Churches, in *Appropriations*, Tithes were frequently conveyed, and by expreſs name: as *Eccleſia de N. cum Decimis*, or the like, are uſually given *Monachis*, *Monialibus*,

&c. ibidem Deo ſervientibus, &c. according to what is before noted of other Countries. But this Mention of Tithes, with Churches in Appropriations, was rare, or not at all, till after the *Normans*. In the *Saxon* times, many appropriated Churches are found, and that from between D. C C. and D. C C C. years ſince, till the *Normans*: but the Charters that conveyed or confirmed them, have uſually nothing but *Eccleſias* and ſo many Cartes or Yard Lands, or ſo much rent annext to them, nor ſpeaking at all of any Tithes transferr'd with them. For ſpecial examples of ſuch ancient Appropriations, you may ſee the recitals of the Charters of King *Bertulph*, King *Beored*, and King *Edred*, made to the Abbey of *Crowland*, and inſerted in *Ingulphus*. But after the *Normans*, in Appropriations, moſt commonly, the Church is expreſt, *Una cum Decima* (that is, the Tithe annext or conſecrated to it) *in annona*, or in other kind, and the places ſometimes are named where the encreaſe of the Tithe grew. Such examples are very obvious, eſpecially in the Chartularies of *Abingdon* and *Rocheſter*. And, as is before noted, the moſt common intent (allow'd alſo by Canonical confirmation, which ſometime, but rarely was added in thoſe elder ages) was, that the Corporation whereto the Appropriation was made, ſhould put Clerks or Vicars in the Churches ſo conveyed to them, which were to anſwer to them for

for all temporal profits, as Tithes and other revenues (although the Churches were distant many hundred miles sometimes from the Monasteries; for a Church in one Kingdome also was often appropriated to a Monastery of another) and to the Ordinary for spiritual function. The general Confirmations that are sometimes found of that time, make it manifest: and for the two Provinces, it is not amiss to add here these two examples of it. In 17 *Will.* 1. *Thomas* Archbishop of *York* makes a general Confirmation *a* to the Priory of *Durham* of all Churches either then appropriated to them, or thereafter to be appropriated, and grants and commands, *Ut omnes Ecclesias suas in manu sua teneant, & quietè eas possideant, & Vicarios suos in eis libere ponant, qui mihi & successoribus meis de cura tantum intendant animarum, ipsis vero de omnibus cæteris Eleemosynis & Beneficiis.* So, under *Henry* the second, Pope *Lucius* the third writes to all the Monks in the Province *b* of *Canterbury*, and bids them, that in all Churches, *in quibus præsentationem habetis cum vacaverint Diœcesanis Episcopis Clericos idoneos præsentetis qui illis de spiritualibus, vobis de temporalibus debeant respondere.* Where, that *in quibus præsentationem habetis*, can be understood only of Churches appropriated (which they enjoyed not *pleno jure*, that is, *c* in which they were bound to allow some competent revenue to a Vicar or

a *Reg. de Hovedon, part.* 1. *fol.* 263. *b.*

b *Append. ad Concil. Lat. part.* 16.

c *Panormitan. ad tit. de restit. in integr. cap. audivit.*

Curat, and had not exempt jurisdiction, nor the power of institution of Vicars, without presentation to the Bishop) as is plainly known from what follows touching the answering for the Temporalties to the Monasteries. And in those times, as is already delivered, it was most frequent, to have presentations made by Monasteries to their appropriated Churches; and the Vicar-Incumbents or Presentees had no more of the profits (notwithstanding the institution) than the Monasteries would arbitrarily allow them. Neither follow'd any disappropriation upon such Presentation, however the later Law be taken otherwise. Nor was there any perpetual certainty of profits or revenues to their Presentees, until such time as the Monks, by composition with the Ordinaries, or by their own Ordinance (which prescription after confirmed) appointed some yearly salary in Tithes, or Glebe, or Rent, severally for the perpetual Maintenance of the Cure; which Salaries became afterward perpetual Vicarages. And to these testimonies touching appropriated Churches in those ancient times, and presentation to them, you may also add that *d* Canon of the Council of *Westminster*, held in the second of King *John* by *Hubert* Archbishop of *Canterbury*, to the same purpose: wherewith is agreeing also one of *Othobons* Legatine Constitutions, touching filling of Appropriations, and making of Vicarages;

d Roger. Hoved. anna'. 2. fol. 460. b.

ges; as also the two Statutes of 15 *Rich.* 2. *cap.* 6. and 4 *Hen.* 4. *cap.* 12. touching the point of which Statute, a Bill in the next Parliament was again put in, but answered with *e Scient les Statutes en faitez & gardez.*

e *Rot. Parl.* 5 *Hen.* 4. *nu.* 74.

II. In those elder Appropriations, it appears that the Church and the Tithes, and what else was join'd with it as part of the assign'd revenue, by the practice of the time passed in point of interest from the Patron by his gift (which oftentimes was by livery of a book or a knife on the Altar) not otherwise than freehold convey'd by his deed and livery. Neither was confirmation or assent of the Ordinary (as it seems) necessary as of later time. Observe this one example of the Church of *Waldren* appropriated to the Priory of *Lewes* in *Suffex* by *Robert* of *Dene*, wherein he as Patron appoints also the conditions to which the Presentee or Vicar-encumbent of the Priory should be subject. *Ego* Robertus *de* Dena (says the *f* Deed) *& uxor mea* Sibilia *pro animabus antecessorum nostrorum & pro salute nostra, & successorum nostrorum concedimus Deo &* S. Pancratio Latisaquensi *Ecclesiam de* Waldrena *cum terris & Decimis, & omnibus ad eam pertinentibus, & cum duabus partibus Decimæ bladorum de* Calvindona, *ita videlicet ut Sacerdos de* Waldrena, *de his omnibus solvat* S. Pancratio *singulis annis dimidiam marcam argenti. Ipse autem Sacerdos per manum Prioris* S. Pancratii *Ecclesiam de* Waldrena

f *In Thesauro Cottoniano.*

drena *tenebit quamdiu caſte & religioſè vixerit. Quod ſi crimen incurrerit, judicio Prioris* Latiſaquenſis *corrigetur aut expelletur.* This, about the time of *Henry* the ſecond, was made *coram duobus Hundredis apud* Hundeſtuph. Very many other are extant ſo made, as well by common perſons as the King in the *Saxon* times of Churches, and ſince, of Churches and Tithes without any confirmations; ſaving ſometimes that thoſe of common perſons are ratified by the King *g* as ſupreme Lord, as alſo they are too by other Lords: for it was not unuſual for Tenants to have their Lords confirm their alienations of all kind of poſſeſſions. I know what is ſaid in the later Law of the Kings power as ſupreme Ordinary for the part of Juriſdiction, and I acknowledge it, as all ought: but in thoſe elder times, that was not the matter which made appropriations good, where his confirmation had place, and none was from the Biſhop: at leaſt it cannot at all be proved that his ſupreme Juriſdiction ſpiritual was ſo much thought of in them, although otherwiſe apparent teſtimony be of the exerciſe of ſuch juriſdiction and of the right of it in the elder ages in this Kingdome. But the reaſon of appropriations ſo practiſed by lay Patrons only, was the challenged right which in thoſe times they moſt commonly uſed in diſpoſition of their Churches, as if they had been all Donatives by collation (without preſentation) that is by Inveſtiture from

g Videſs. 7 *Ed.* 3. *fol.* 4. *b.* & *Eſſon. & Placit. de* 10. *Rich.* 1. *Ro.* 22. Hertf. *caſ.* Reginaldi *de* Argentain.

from their own hands only, which gave their Incumbents real poſſeſſion of the Tithe of the Church and all the revenues, no leſs than preſentation, inſtitution, and induction do at this day. For however, not only the Decrees both of the Pope and general Councils, were anciently againſt that kind of inveſtiture, but alſo the Provincial or National Synods here held, had like Canons forbidding it, as in 3 *Hen.* 1. the *b* Council of *Weſtminſter* held under *Anſelme* Archbiſhop of *Canterbury*, and *Girald* of *York*, ordains, *Ne Monachi Eccleſias niſi per Epiſcopos accipiant*, and in 25 *Hen.* 1. at the ſame place in the National Synod, held by Cardinal *John de Crema*, the Popes Legate, it was conſtituted, that *i Nullus Abbas, nullus Prior, nullus omnino Monachus, vel Clericus Eccleſiam ſive Decimam ſeu qualibet beneficia Eccleſiaſtica de dono Laici ſine proprii Epiſcopi autoritate & aſſenſu ſuſcipiat, quod ſi præſumptum fuerit, irrita erit donatio hujuſmodi, &c.* and ſome allowance was given to theſe Canons by the King; yet it is moſt certain that the practice was for divers years afterward otherwiſe, and that Churches with Tithes were moſt commonly given by lay Patrons, without the Biſhops aſſent or inſtitution, and that as well by filling them with Incumbents, as appropriating them to Monaſteries, Chapters, or otherwiſe. Beſide the examples that might enough prove it and are obvious in old Chartularies,

h *Guil. Malmesb. de Gest. Pontific. lib. 1. vide Anselm. lib. 3. Epist.* 45.

i *Continuat. Florent. Wigorn. anno* 1125.

laries, the preamble of a Decretal of *Alexander* the third, ſent, under *Henry* the ſecond, to all the Biſhops of *k* the Province of *Canterbury*, is herein full teſtimony. *Ex frequentibus querelis* (ſays he) *didicimus in partibus veſtris conſuetudinem pravam à multis retro actis temporibus invaluiſſe, quod Clerici Eccleſiaſtica beneficia ſine conſenſu Epiſcopi Diœceſis vel Officialium ſuorum* (*qui hoc de jure poſſunt*) *recipiunt minùs quam deceat, ſollicitè cogitantes, quomodo id a Patrum ſanctorum eſt inſtitutionibus alienum & Eccleſiaſtica contrarium honeſtati. Unde cum tu frater &c.* where you ſee plainly that courſe of Inveſtiture or donation by the Patron without preſentation, was *conſuetudo quæ à multis retro actis temporibus invaluerat*, which ſhews it to have been then a part of the ſecular Law; though the judgement of the Biſhops and the Pope titles it *prava*: agreeing to this are other teſtimonies in *l Gregories* Decretals, and that in Epiſtles to all the Biſhops of *England* to forbid it: and it is ſpecially obſerveable, how ill the Baronage of *England* took it when *Anſelm* under *Henry* the firſt would have, through Papal Canons, inhibited the practice of Inveſtitures, uſed by the King and other lay Patrons, which is recorded in an Epiſtle *m* of that *Anſelm*, directed to Pope *Paſchal* the ſecond, thus ſpeaking. "Domino Reverendo & "Patri diligendo *Paſchali* ſummo Pontifici *An*- "*ſelmus* ſervus Eccleſiæ *Cantuarienſis*, debi- "tam

k Extr. de Inſtit. c. 2. ex ſequentibus. qui Canon plenius habetur in Appendice ad Concil. Lateran. part. 28. cap. 11.

l Tit. de jure patr. l. 10. Cum Laici. c. 11. cura Paſtoralis & c. 21. relatum. vide Roger. de Houeden. Annal. fol. 208. a. I. Sarisbur. Policrat. lib. 7. cap. 21. & App. ad Concil. Lat. part. 15. cap. 2.

m Epiſt. Anſelm. Ms. 195. in Bibl. Cottoniana.

"tam ſubjectionem & orationum aſſiduitatem.
"Poſtquam revocatus ad Epiſcopatum redii in
"Angliam, oſtendi decreta Apoſtolica quæ in
"Romano Concilio præſens audivi, ne ſcilicet
"aliquis de manu Regis aut alicujus Laici Ec-
"cleſiarum Inveſtituras acciperet, ut pro hoc
"ejus homo fieret; nec aliquis hæc tranſgredi-
"entem conſecrare præſumeret. Quod audien-
"tes Rex & Principes ejus, ipſi etiam Epi-
"ſcopi, & alii minoris ordinis tam graviter ac-
"ceperunt, ut aſſererent ſe nullo modo huic rei
"aſſenſum præbituros, & me de regno potiùs,
"quam hoc ſervarent, expulſuros & à *Romana*
"Eccleſia ſe diſceſſuros; unde reverende Pater
"veſtrum petii, per Epiſtolam noſtram, conſili-
"um, &c. This is in the Ms. Volume of Epiſtles of *Anſelm*, fairly written by *John* de *Grandiſono* Biſhop of *Exceſter*, in the year M. CCC. LXIV. in which are above C. more than are publiſhed in his printed Works: they menaced the Archbiſhop with baniſhment, and the Pope with revolt from his See, only for their withſtanding that practice of Inveſtiture; whereof, for ſo much as concerns Abbies, Priories, or Biſhopricks (in giving them by the ring and baſton) much teſtimony is in the ſtory of about that age: and the Kings remiſſion of the Inveſtitures of thoſe great dignities is frequent: but, for Pariſh Churches, of which we here chiefly ſpeak; the common occurrences of Inveſtitures mention them

but little. But for the uſe of them known alſo by the name of Inſtitutions; ſee the Fine anon tranſcribed of 33 *Hen.* 2. as alſo ſpecially a commiſſion ſent by Pope *Alexander* the third, to the *i* Dean of *Chicheſter*, touching a Parſon that was *legitime inſtitutus à* Willielmo *Nobili viro*, and had reſigned *Perſonatum Capellano Domini.* But this courſe of Inveſtiture by Lay-men, after *Anſelmes* time, began to be of leſs uſe; and ſome, obeying the Canons, preſented, others ſtill collated by Inveſtiture till about *Richard* the firſt and King *John*'s time, whereof more in the next Paragraph. To the Lay Patrons challenged right of ſuch Inveſtiture of Churches and Tithes, belongs ſpecially the Granting of Rents and ſuch like out of Rectories by the Patrons only, and the Sons or others Succeſſion in Pariſh Churches after the death of their anceſtors, of both which (little known vulgarly) antient warrant is yet remaining.

* *In Append. ad Con il. Lat. part.* 8. *cap.* 14. *tit. de teſtibus cogendis.*

III. For the firſt; in the Chartulary of the Priory of *S. Needs* in *Huntingdonſhire*, one *Robert Fitz-water* (about King *John*'s time) gives to the Priory ſix marks of ſilver *nomine certi beneficii in Eccleſia de* Wimbiſſe *annuatim percipiendas per manum perſonæ ejuſdem Eccleſiæ. Quare volo* (ſayes he) *ut quicunque in præfata Eccleſia de* Wimbiſ. *ad præſentationem meam vel hæredum meorum perſona inſtituta fuerit prænominatis Monachis* S. Neoti *de ſupradicto beneficio* VI. *marcarum*

rum fidelitatem faciat, ſalvo mihi & hæredibus meis jure advocationis & præſentationis, &c. and divers others ſuch like are. Neither have I met with a precedent of thoſe times wherein the Incumbent was grantor, as at this day by the Common Law (the Church being full) I think he muſt: but moſt uſually a proviſion by the Patron was inſerted to this purpoſe, that the ſeveral Incumbents ſhould by Oath bind themſelves to the true payment: nor was it ſo neceſſary to have the Ordinaries aſſent, when that, which the Ordinary by the practice of the later Law is to do in his Inſtitution, was in frequent practice ſupplied by the Patrons Inveſtiture. Out of which may be the better underſtood that part of the new Canon in the Synod of *Weſtminſter*, held under *k Richard* Arch-biſhop of *Canterbury*, in 21 *Hen.* 2. *Nulli liceat Eccleſiam nomine Dotalitii ad aliquem transferre*, that is, *That no Patron ſhould give his Church*, as it were *in Frankmarriage*, or make of it a *Donatio propter nuptias* (as the Civilians call it) to remain with the husband of his Daughter or Kinſwoman, during his life. How could ſuch a gift have at all been made by preſentation (as of later time it is underſtood) Inſtitution or Induction? and a moſt obſervable example of this matter is in a Fine of 33 *Hen.* 2. in theſe words. "Hæc eſt finalis concordia facta "in Curia Domini Regis apud *Cantuariam* an- "no Regni Regis *Henrici ſecundi* XXXIII. die

k *Roger Hoved. Annal. fol.* 310.

"Veneris proxima post festum sancti Johannis "Baptistæ Coram *Radulpho* Archidiacono *Co-* "*lecestriæ*, & *Rogero* filio *Reinfri*, & *Roberto* de "*Witefeld*, & *Michaele Belet* Justiciariis Domi- "ni Regis, & aliis fidelibus Domini Regis ibi- "dem tunc præsentibus inter Priorem de *Lewes* "& Monachis ejusdem loci & Willielmum fili- "um Arthuri, quem Richardus de *Budegintun* "posuit loco suo ad lucrandum vel perdendum "de advocatione Ecclesiæ de *Budeketun*, unde "placitum erat inter eos in Curia Regis, scilicet "quod Prior & Monachi remiserunt & quietum "clamaverunt eidem *Richardo* & hæredibus suis "advocationem prædictæ Ecclesiæ per ita quod "persona quæ per ipsum *Richardum* vel hære- "des ejus in eadem Ecclesia instituetur, reddet "singulis annis Ecclesiæ de *Lewes* IIII. solidos "scilicet ad festum Sancti Michaelis: & ille qui "in eadem Ecclesia per ipsum *Richardum* vel "hæredes suos instituetur persona, post insti- "tutionem suam, coram Episcopo fidelitatem "præstabit quod prædictam pensionem prædi- "cto termino Ecclesiæ de *Lewes* persolvet, & "postea in Capitulo de *Lewes* eandem fidelita- "tem innovabit. Here it appears (it seems) by the judgement of the Kings Justices, that the Patron had such interest in those times, that he might alone without grant of the Incumbent (who came in by his Institution and Investiture) or confirmation of the Bishop, charge the Church with

with a penſion: and this, being in a Fine, is of autority beyond exception for that age. But the like is in *Rot. Fin.* 7 *Rich.* 1. *Lancaſt.* in a Fine levied between *Theobald Fitz-vater*, demandant in a Writ of Right of Advowſon againſt the Abbot of *Shrewsburie*, of the Church of *Kirkham*, where XII. mark Rent is reſerved to the Abbot, with a like clauſe for the Encumbents fealty for true payment: the like in *Fin.* 4 *Rich.* 1. *diverſ. Comit.* touching the Church of *Dacheworth*: yet alſo, in that age, the aſſent of the Parſon and Biſhop was ſometime had: as in *Rot. Fin.* 7 *Rich.* 1. *Staff.* where, upon *Right of Advowſon* by the Prior and Canons of *Stanes* againſt *Alice Hopton*, for the Church of *Cheklegh*, *Alice* & *Robertus filius & hæres ſuus per aſſenſum & voluntatem H. Coventrenſis Epiſcopi in cujus Diœceſi Eccleſia illa ſita eſt*, & Osberti *perſonæ ejuſdem Eccleſiæ tunc ibidem præſentium, conceſſerunt præfatis Priori & Canonicis* XXs. *de eadem Eccleſia de* Cheklegh *annuatim percipiendos ſine omni contradictione imperpetuum de Clerico eandem Eccleſiam poſſidente quicunque ille fuerit ad duos terminos videlicet ad Paſcha* Xs. *& ad feſtum S. Michaelis* Xs. *&c.* Here the aſſent of the Parſon and Biſhop being both preſent in Court, is inſerted in the Fine; yet enough examples ſhew that it was not (as may be ſtrongly conjectur'd) thought altogether neceſſary. But indeed however the right of Inveſtitures had been then much exer-

ciſed by Lay-Patrons, yet in caſe of Clergy-Patrons, if the Church were not of exempted juriſdiction, the Biſhops more uſually inſtituted: and therefore was their aſſent the ſooner admitted ſometimes into the Fine; and doubtleſs alſo ſome Lay-Patrons willing enough herein to obey the Canons, after *Anſelm* and perhaps before arbitrarily fill'd their Churches by preſentation to the Biſhop: this may be collected eſpecially out of that of the grant of the *l* priviledge of Inſtitution in Churches, made by *Turſtan* Arch-biſhop of *York* under *Henry* the firſt, to the Arch deacon of *Richemond*, as alſo out of two Decretals from *Rome*, ſent by Pope *m Lucius* the third, under *Henry* the ſecond to the Biſhop of *Norwich*: and in ſome other *n* authority both in our year books and in the fine Rolls alſo of the beginning of King *John*, the Biſhops aſſent in ſuch grants of that time is ſometimes found: and in that commonly (but without ſufficient ground) attributed to *Randol* of *o Glanvill* chief Juſtice of *England* to *Henry* the ſecond, the Biſhops inſtitution is ſpoken of as a thing of not unknown right upon a recovery in *Darrain preſentment*, according as the Canons require. And in an Epiſtle *p* of *Giraldus Cambrenſis* (written in thoſe times to *Hugh* Biſhop of *Lincoln* about his Parſonage of *Ceſtreton*, which he chal'enged upon preſentation of himſelf made by *Gerard* of *Camvill*, a Gentleman of great worth in *Lincolnſhire*) the

l *Extr. de Inſtit. c. 6. cum veniſſent.* Edit. Gregoriana.

m *Extr. tit. de jure jurando, c. 11. tua vo. & de jure patr. c. 24. cui autem.*

n 16 *Ed. 3. tit.* Annuitie 23. *& Rot. Fin.* 1 *Joh. Huntingdon.*

o *Lib. 3. c. 20.*

p *In Symbol. Electorum Ms.* in Bib. Cotton.

the Biſhops Inſtitution is ſpoken of, as clearly neceſſary, according to the Canons, and noted with *Epiſcopus ſolus honores dare poteſt*; which, you muſt remember, was written by one that was fervent for the Canons, and had alſo written againſt the *avitæ conſuetudines* or common Laws of that time. But theſe teſtimonies muſt be warily underſtood, and compared with the former and frequent practice of the contrary, which about that time, eſpecially under *Richard* the firſt and King *John* (it ſeems) much altered. Neither till about that time can it be found, that the more common practice of Lay-mens Inveſtitures ceaſed. Nor was the Biſhops Inſtitution preſently and uniformly thence uſed, as of later ages. The authority of the Clergy had by that time taken away the uſe of Lay-mens Inveſtitures. Yet was it not clear, it ſeems, upon the practice that here followed, what dignity of the Clergy ſhould then exerciſe the Inſtitution: for you ſhall find it ſometimes done by the Arch-deacon, as it was alſo before King *John*, in ſome caſes where any Lay-man omitted his Inveſtiture; as may be gathered out of a Decretal, ſent *q* hither from Pope *Alexander* the third, to forbid the Arch-deacon of *Ely*, *Curam animarum ſine mandato Epiſcopi committere*. And afterward alſo, in *Paſch. & Trin. 9 & 10 Reg. Joh.* a Writ is awarded to the Arch-deacon, as now it ought to the Biſhop, upon recovery of a Preſentment.

q Extr. de offic. Archidiac. c. 4. cum ſatis & cap. 5. Archidiacono.

The

The entry is thus: *Recordatum eſt per* G. *filium* Petri & Simonem *de* Pateſhull *quod* Simon *filius* Richardi, *tempore Regis* Richardi, *recuperavit, coram eis & ſociis eorum verſus* Johannem *de* Kalceto *ſeiſinam Advocationis Eccleſiæ de* Buckworth (in Huntingdonſhire) *per aſſiſam de ultima præſentatione, ita quod habuit breve quod Archidiaconus admitteret perſonam ad Eccleſiam illam ad præſentationem eidem; & ipſe* Johannes *impedivit eum ita quod implacitavit eum per breve Papæ, & Dominus Rex prohibuit placitum, &* Simon *venit & impetravit à Rege quod loquela procederet, & quod haberet breve ad Archidiaconum de Clerico ſuo admittendo & habuit. T. domino* G. *filio* Petri & Will. de Briwere. Here twice was the Writ of Admiſſion or Inſtitution ſent to the Arch-deacon, not to the Biſhop. Perhaps indeed it happened in the vacancy of the See: for the time ſo falls, that we cannot be ſure of the contrary. But admit it were ſo. Plainly, the Arch-deacon neither by Canon nor Common Law had any more right of Inſtitution, by reaſon of a Vacancy of the Biſhoprick. And certainly, during the Vacancy, the Writ ſhould *r* go to the Guardians of the Spiritualty, which by the Canon Laws, are the Dean *ſ* and Chapter, but by the Law of *England t*, the Arch-biſhops in their ſeveral Provinces, and the Deans and Chapters only, in caſe where the Arch-biſhopricks are void. And in other places, ſomewh t after-

q *Arg.* 15 *E.* 3. *tit.* Quare non admiſit 5. & *Fitz. N. B.* 47 *d.* &c.

r 6. *Tit. de Suppleud. Prælat. neglig. c.* 3. & 36 *Hen.* 8. *tit.* Adminiſtrators 46.

s Vid. 17 *Ed.* 2. *tit.* Briefe 822 17 *Ed.* 4. 14. *a. Regiſt. Orig. f.* 65. *a.* & 141. *a.* 17 *Ed.* 3 *fol.* 13. *b.* &c.

afterwards alſo I have ſeen Inſtitutions often *u* by the Arch-deacon of *Leiceſter*, while the Biſhoprique of *Lincolne* was void; which ſhews, that thoſe times were the infancy of the exact courſe of Epiſcopal Inſtitutions, as they are at this day uſed. Neither had theſe any priviledge of Inſtitution, as the Archdeacon of *Richmond* had anciently given *x* him, or the like. At this day and from long time before, the Arch-deacon only Inducts, as the Books and common practice ſhew. But thereof thus much by the way.

u 5 *Hen.* 3. *in Matricul. Eccleſ. in Archidiac. Leic.* in Biblioth. Cottoniana.

x Vide *extr. tit. de inſtit c.* 6. *& Rog. de Hoveden p.* 467. *& 468. & ſeq.*

IV. For that other, of Succeſſion in the Benefices of the Anceſtors; doubtleſs, that was, often when the father or other anceſtor was Incumbent and Patron, and by that challenged right, of the time, of Inveſtiture and ſole diſpoſition of the Church, would either in his life time convey the Benefice to his ſon or heir by grant, which by the practice of the time, ſupplied, it ſeems, as well a Reſignation, as Preſentation, Inſtitution, and Induction; or would ſo leave the advowſon to deſcend to his heir, that he (being in Orders) might retain the Church in his own hands, according as the Law then, it ſeems, permitted. Againſt this, was a Canon made in the National Synod at *Weſtminſter* in 3 *Hen.* 1. *Ut filii Presbyterorum non ſint hæredes Eccleſiarum Patrum ſuorum.* And another in 25 *Hen.* 1. held under the Popes Legat: *Sancimus* (as the words are) *ne quis Eccleſiam ſibi ſive Præbendam paterna*

y Videſis extr. tit. de jure Patron. c. 15. conſuluit, &c. & tit. de filiis Presbyt. Paſſim. & tit. de paſtis c. 5. accepimus. & tit. de Teſtibus c. 7. ex parte. & Append Concil. Lat. part. 8. cap. 22. Hereford. Epiſcopo & Abbati de Forde. Necomittas ejuſdem appendices, part 15. cap. 15. & part. 19. cap. 1. & part. 28. cap. 4. & 8. part. 49. cap. 14. & part. 50. cap. 60.

vendicet hereditate y *aut ſucceſſorem ſibi in aliquo Eccleſiaſtico conſtituat Beneficio.* Without that challenged right of Inveſtiture ſuppoſed in the Incumbent (having alſo the Patronage) which ſupplyed all that the Patron, Biſhop, and Arch-deacon at this day do in filling a Church, how could any Parſon make to himſelf a ſucceſſor or an heir to have colour to claim the Incumbencie from his Anceſtor. To this purpoſe may be well remembred a paſſage in a verdict found in *Rot. Placit. 6 Rich. 1. Rot. 1.* of ſuch a kind of conveyance of S. *Peters* Church in *Cambridge*: the words are; *Juratores benè ſciunt quod quidam* Langlinus *qui tenuit Eccleſiam illam, & qui fuit perſona illius Eccleſiæ dedit Eccleſiam illam: ſecundum quod tunc fuit mos Civitatis* Cantebrigiæ, *cuidam parenti ſuo* Segario *nomine qui illam tenuit per* L X. *annos & plus, & fuit perſona illius Eccleſiæ, & ipſe poſteà dedit Eccleſiam illam* Henrico *filio ſuo qui illam tenuit per* L X. *annos, & ipſe in ligea poteſtate ſua dedit illam Hoſpitali* Cantebrigiæ *per Cartam ſuam & idem Hoſpitale habet Eccleſiam illam.* They diſcreetly find the cuſtome of the City to maintain the Conveyance, ſuppoſing (it ſeems) that the cuſtom would help the laſt Grantors title, although the Common Law, which had by that time received ſome change herein, by force of the Papal Decrees, ſhould not have allowed it. I know, in the Canons another thing is alſo underſtood in this matter of

of Succeſſion, that is, the irregularity of the ſon of a Clerk; but that can extend only to the matter of Illegitimation upon Marriage forbidden to the Clergy. For which point alone, the Biſhops refuſal had been the beſt help, but that indeed the other kind of diſpoſition of Churches by Inveſtiture prevented his refuſal when Preſentation was not made to him.

V. But after ſuch time as the Decretals and the increaſing authority of the Canons, about the year M. CC. had ſetled the univerſal courſe here of filling of Churches by Preſentation to the Biſhop, or, (as it ſeems ſometimes it was) to the Arch-deacon, or to the Vicar of the Biſhop, or Guardian of the Spiritualties; that uſe of Inveſtitures of Churches and Tithes ſeverally or together, practiſed by Lay-men, was left off, and a diviſion of Eccleſiaſtical and Secular right from thence hath continued in practice. Neither did [z] the King afterward (much leſs common perſons) fill their common Parochial Churches without ſuch preſentments from Biſhops. Parochial Churches; for of ſpecial donative Chappels we here ſpeak not: neither were Appropriations of Churches & Tithes afterward allowed, that had not [a] confirmation from the Ordinary immediate or ſupreme. And in the ſame age alſo came in the Law of the Lapſe, whereby the Biſhop is to collate after ſix months upon the Patrons default, it being before at his liberty to fill his

[z] Vide *Rot. pat. 9 Joh. R. membr. 1* alibi ſæpe in Archivis quæ ad illius tempora ſpectant.

[a] 2 *Ed.* 3. 23. *b.* 3 *Ed.* 3. *fol.* 11. *b.* 10 *Ed.* 3 *fol.* 50. *a.* & vide *Ceſum Epiſcopi Lincoln. in comment.* 2. *&c.*

his Church at his pleaſure: neither was he confined to any time. That time of Lapſe was (according as the uſe of Preſentation grew by degrees ſetled) received into the Laws of *England* out of the general *b* Council of *Lateran*, held in 25 *Hen.* 2. under *Alexander* the third; to which, four Biſhops (according to the ancient uſe of this Kingdom) that is, *Hugh* Biſhop of *Durham*, *John* Biſhop of *Norwich*, *Robert* Biſhop of *Hereford*, and *Reinold* Biſhop of *Bath*, were ſent as Agents for the Church of *England*. By that Council, after vacancy of ſix months, the Chapter is to beſtow thoſe Churches, which the Biſhop, being Patron, had left ſo long void; and upon their default, the Metropolitan: but no word is of Lay Patrons in it. Yet by reaſon of the Authority of that Council, and of a Decretal *c* of the ſame Pope, which ſpeaks of like time upon default of Lay Patrons, it hath been ſince taken here generally, that after vacancy of ſix months, the next Ordinary is regularly to collate by Lapſe. Which perhaps was received for a Law to continue as it hath done, in the Council or Convocation at *Pipewel*, held in the firſt of *Richard* the firſt, and ſome ten years after that General Council of *Lateran*. For in that of *Pipewel*, the principal thing in hand was the providing for Churches upon death of their Paſtors. *Habitus eſt* (ſaith *Ralf de Diceto*, Dean of *Pauls* under King *John*) *generalis conventus juxta diſpo-*

b Vide *Reg. de Hoveden, an.* 1179.

c *Extr. de jure Patronat. c.* 22. *tam ii.*

*disposition*em *Regis & Archiepiscopi* XVI. *Kal. Octobris apud* Pipewel, *ut de consilio vacantium per Angliam Ecclesiarum haberetur tractatus.* I know it was for many Churches then void: but it is like enough that according to the general Council this Law was then here received: but that's only a roving conjecture, and so I leave it: and as in the [d] Canon Law the Council of *Lateran* (which must be understood that of *Alexander* the third) is commonly affirmed for the authority of the original of the right of this Lapse in the case of Bishops specially and Chapters, so is it, in ancient monuments of our Laws, also in the case of Lay Patrons. *Ante Concilium Lateranense* (saies [e] Bracton) *nullum currebat tempus contra præsentantes.* And in *Placit. de Banco Mich.* 3 *Ed.* 1. *Rot.* 105. *Staff.* The Bishop of *Coventrie* and *Lichfield* pleads a collation by *Lapse authoritate concilii*, against the *Prior* of *Landa*, to the Church of *Patingham*, and in the same Plea Rolls of *Pasch.* 5 *Ed.* 1. *Rot.* 100. *Linc.* in a *quare non admisit*, by *Alienor*, the Queen Mother, against the Bishop of *Lincoln*, for the Church of *Orkestow*, the six Months and the computation of them (which is there adjudged according to that in [f] *Catesbies* case) is referred to *Concilium Apostolicum*, which can be no other than that of *Lateran*, however the printed Copy of that which we commonly call *Breton* [g] talks of the Council of *Lions* for the Director

d *Extr. tit. de suppl. præl. negl. c.* 3. & 4. *ad Conc. præb. c.* 5. &c.

e *Lib.* 4. *tr. de Assis. ult. pras. cap.* 6. §. 3. *Vide, si placet, Roger. de Hoveden. part.* 2. *Annal. fol.* 430. *b.* & *Extr. tit. de Officio Judicis ordinarii c.* 4. *cum vos. ante Concilium Pape Alex.* 3. *illud ni fallor rescripsit, & lucem hac adsert.*

f Coke *Report. part.* 6. *fol.* 62.

g *Chap.* 62. *des exceptions, fol.* 225. *a.*

of the *Lapſe*, whereas indeed the MSS. have for *de Lions*, *de Lautr.* which is doubtleſs for *de Lateran*; yet alſo in the Rolls of the Common pleas, of *Paſch.* 9 *Ed.* 1. *Rot.* 58. *Suthampt.* the Arch-biſhop of *Canterbury* defendant in a *Darrain preſentment*, againſt the Abbot of *Lyra*, pleads that the Church (of *Godeſhull*) *eſt plena ex collatione ipſius Archiepiſcopi ratione Concilii Lugdunenſis*, and being demanded by what article of the Council, would not thereto anſwer, whereupon, after long deliberation, judgment is given for the Abbot. But in the ſame Plea the Law and cuſtom of *England* for the ſix months time of Lapſe (which they call there *Conſuetudo regni Angliæ*) is refer'd to a Council; but none is ſpecially named ſaving that of *Lions*. But although from Canonical authority the Lapſe was thus received into our Laws, yet it hath been no otherwiſe than the Baronage of *England* would permit it: for the Canons otherwiſe (as at this day they are) give but four *h* months to a Lay Patron, and ſix to an Eccleſiaſtick, which difference the Law of *England* would never permit; as alſo neither that of the right of collation which the Chapter is to have upon default of the Biſhop, however the Pope would have put it here in execution according to the words of the Council, which you may ſee in the authorities before noted out of the Text of the Canon Law: and therefore the Law of Lapſe is well refer'd rather

h *c. unico* §. 1. *de jure patr. in* 6.

ther to *i Consuetudo Regni Angliæ* (by which title other parts of our * Laws were often named that were of later begining) than to the Council, although thence doubtleſs, as is ſhewed, it had its original. But although now, what through the Decretals and other Canons againſt Laymens Inveſtitures, what by reaſon of the Law of Lapſe, the Patrons former intereſt or challenged right was much diminiſhed in the Church and the diſpoſition of the revenues of it (for it followed alſo that the Ordinaries aſſent was requiſite) yet the *formulæ* or precedents uſed from ancient time in the recovery of preſentations ſtill retain, to this day, Characters in them of that Inveſtiture: as the *quare impedit*, that is, *Præcipe* A. *quod juſtè &c. permittat* B. *præſentare idoneam perſonam ad Eccleſiam de N. quæ vacat & ad ſuam ſpectat donationem &c.* Where *Donatio* ſtill ſavours of the ancient right of Inveſtiture; agreeing whereto is that of *Eccleſiam* k *concedere*, uſed elſewhere in our Law, and attributed to the Lay Patron. Neither doth *præſentare ad Eccleſiam* originally denote otherwiſe than the Patrons ſending or placing an Incumbent into the Church, and is made only of *repræſentare*, which in that Council of *Lateran* and elſewhere occurres alſo for *præſentare*: *repræſentare* is properly to reſtore, give back, or repay, as *reddo* or *repræſto*, whence *præſentare* taken in the barbarous times denoted as *dare* or *donare*; ſo that *idoneam*

i *Regiſt. orig. fol.* 42. *b. inter prohibitions.*

* Vide 19 Ed. 2. tit. Brieſe 842. 18 *Ed.* 3. *fol.* 55. *b. Regiſt. Orig. fol.* 98. *a.*

k *Glanvil. lib.* 6. *cap.* 17. *alibi item* ſcilicet *in Archivis quæ vetuſtiora Richardi primi aut initii Johannis tempora ſpectant, & Vide Roger. de Hoveden fol.* 425. *b. & Pat.* 3 *Hen.* 3. *part.* 2. *membr.* 2. *l. Extr. tit. de cenſibus c.* 11. *cum Clerici. & tit. de Præb. & dig. c.* 31. *In Lateranenſ. §.* 2. *& tit. de privileg. c.* 3. *& Hoſtienſ. Summ. tit. de Capellis Monachorum. & ſapius.*

idoneam perſonam ad Eccleſiam præſentare was all one with *idoneam perſonam ad Eccleſiam dare* or *donare*, or in *Eccleſia conſtituere*, or καθιστάναι as *m* the Apoſtles word is to *Titus*, where he bids him πρεσβυτέρους κατὰ πόλιν καθιστάναι that is, *appoint* or *conſtitute*, or indeed *Preſent Prieſts* or Encumbents in *every City*: for he that there ſhould turn it by *Preſent*, might ſo keep the property of the word in both tongues, though not as *preſent* is now reſtrained: this is juſtified out of an old Gloſſary that turns *Repræſento* by ἀποκαθίστημι· for then clearly καθίστημι is *Præſento*: while *præſentare* ſo ſignified alſo in practice, that is in the time of the uſe of Lay Inveſtitures, all Churches ſo given were properly Donatives, which attribute hath been ſince reſtrained, chiefly to ſuch free-Chappels as the Ordinary hath no intereſt in, but are collated or given by the act only of the Patron, and this interpretation of *præſentare* is juſtified alſo *n* out of the *quare impedit* upon a right of collation (which is but a donation) by the Biſhop, wherein the words are alſo *quod permittat præſentare ad Eccleſiam &c.* Donation (which is meerly as Inveſtiture in regard of the Biſhop) is there called Preſentation. So alſo is the Law in the Kings Caſe and of common perſons, being diſturbed to collate by Letters Patents to their free Chappels or Donatives: the VVrit in thoſe Caſes is only *præſentare*, which confirms that it denotes Donation or Inveſtiture. But in the Counts upon

m *Epiſt. ad Tit. cap. 1. comm. 5.*

n *16 Ed. 3. tit. Briefe 660. Fitz-h. Nat. Br. fol. 33. B.C. D. E.*

upon ſuch Writs, the ſpecial matter muſt be diſcovered. The like Law is in the Caſe of him that hath the Nomination of the Clerk: his VVrit is alſo *præſentare*, although another have the right of that which is now known by the bare nam e of preſentation. Nomination indeed or ὀνομάζειν being the true and eldeſt name found in the Laws belonging to the *o* Church, that denotes filling or preſenting to a Church, in that ſenſe as Preſenting is taken for giving or inveſting. For, in the primitive times, when the Patron had founded his Church, he nominated whom he would have received into Orders for the ſerving of that Cure; and then if the nominated were found worthy he was received into Orders for that purpoſe, which Ordination turned afterward into Epiſcopal inſtitution, as is before declared: that nomination was indeed as Inveſtiture or giving the Church: ſo is the word uſed in the Laws; and agreeing to them is the purer time of Latin wherein *Nominatio p* is for giving a Place or Office that is void. And as theſe phraſes of the VVrits taſte of the ancient right challenged by the Patron, ſo do ſome aſſertions in our year books of later time; as that of entring *q* into an Advowſon by entring into the Church, of paſſing an *r* Advowſon by livery of ſeiſin at the Church-door, of the Patrons entring into the place *ſ* of foundation if the Church ceaſe to remain hallowed, and the like. And to like origi-

o Διατάξ. Νιαρ. ρκγ.

p *Cicero Epiſt. ad Brut.* 7.

q 13 *Ed.* 3 *fol.* 16. *a.*

r 43 *Ed.* 3. *fol.* 1. *b.*

ſ *Hen.* 7 *fol.* 37. *a.*

nal may you refer thoſe of the Kings preſentations, which have *Dedimus & conceſſimus* in them yet retained, although the force of the words by the latter Law, make but only a † preſentation. But the Law is now ſetled; neither with us hath the Patron alone now any prerogative or direct intereſt in the Church or the revenues, beſide his right of Advowſon or Preſentation to the Biſhop, by whoſe Inſtitution and the Arch-deacons induction every Church regularly is to be filled. Neither (for ought I have heard) hath he in our Law any of thoſe *Droicts honorifiques*, which the French allow him in Precedence, Seats, and the like. Theſe particulars of Benefices and Advowſons had here their place, both becauſe in the ancient conveyance of them either by *Inveſtiture* to an Incumbent, or by *Appropriation*, the revenue that was in Tithes paſſed by expreſs words, and that in point of intereſt from the Patron, as alſo in regard that, at this day, the Patron of a Parſon prohibited by *Indicavit*, to ſue in the Spiritual Court for the fourth part of the Tithes of a Church, may have his *Droit d' avowſon de Diſmes*. It was requiſit therefore to add theſe not vulgar or obvious notes of the Advowſons in this diſcovery of the ancient conveyance and intereſt of Tithes.

† *Vide* 19 Ed. 3. *tit.* Quare impedit 60.

CAP.

CAP. XIII.

I. Infeodations *here into Lay hands ſince the* Statutes *of* Diſſolutions. *Of* Infeodations *before that time in* England. *Somewhat more of the original of Lay mens* practice *in* arbitrary Conſecrations *or* Infeodations.

II. Exemptions *or diſcharges of payment originally by* Privileges, Preſcriptions, Unity, Grants *or* Compoſitions, *and by the Statutes of* Diſſolutions.

I. FRom thoſe arbitrary Conſecrations, and frequent Appropriations of Tithes (whereof we have hitherto made mention) to Monaſteries or other Religious Places, as Colleges of Regulars, Chantries and Free-Chappels, came the preſent and common Infeodations of them into Lay hands, which began in the age of our Fathers. For, the Portions of Tithes conveyed to them out of Cloſes, parts of Mannors, and whole Demeſnes, by the owners, together with the Tithes granted and poſſeſſed with appropriated Churches, were firſt by the Statute of Diſſolution of Monaſteries in 31 *Hen.* 8. and by that other of 1 *Ed.* 6. given to the Crown, and from thence granted to Lay men, whoſe Poſterity or Aſſignees to this day hold them with like limitation of eſtate, as they do other inheritances of Lands or Rents, and for

them, have like remedy by the Statute of 32 *Hen.* 8. *cap.* 7. by real actions, as *Aſſiſe*, *Dower*, or other originals, as for Lands, Rents, or other Lay poſſeſſions by the Common Law they might have. But although in other States theſe Infeodations or Conveyances of the perpetual right of Tithes to Lay-men, be very ancient and frequent alſo; yet no ſuch certain or obvious Teſtimony of their antiquity, is in the moniments of *England* as can enough aſſure us that they were before the Statute of Diſſolutions in any common uſe here. But ſome were, and, for ought appears in the practice of the time, many more might equally have been. And what ſcruple was there but that long before the general diſſolution of Monaſteries, *Henrie* the fifth might (by the Law of the Kingdom) have made Infeodations into Lay hands (as *Henry* the eighth did) of all Tithes belonging *a* to the Priors aliens whoſe poſſeſſions were given to him by Parliament, he had them ſetled in the Crown in Fee, and afterward diſpoſed of them to other Eccleſiaſtick Corporations *b* at his pleaſure, no otherwiſe than of other Lay Poſſeſſions. By the way, we underſtand, in theſe Infeodations, by the name of Lay-men, only ſuch as were not either in Orders or profeſſed in Religion: for otherwiſe all the poſſeſſions of Tithes enjoyed by Nuns and the like, that were indeed Lay (though not commonly called ſo) might be comprehended under the

a *Rot. Parl.* 2 *Hen.* 5. *part.* 2. *art.* 9.

b Vide *Cart.* 2 *Hen.* 5. *part.* 1. *num.* 3. *&c.*

the name of Infeodations. But, that ſome were here; obſerve that of *Odo* Biſhop of *Bayeux* and Earle of *Kent*, which is before cited out of the lives of the Abbots of S. *Auguſtines* in *Canterbury*. The words are, *Decimas aliquas quas mei fideles habebant*, *&c.* What can that be, according to the words, other than Tithes that were in the hands of ſome of his Tenants? You may add that of *Robert S. John* cited before out of the Book of *Boſgrave*, where he had, by the gift of his brother *William*, certain Tithes, which he gave to the Priory, for maintenance of a fourteenth Monk. And obſerve the reſt of the Deed there. So out of the Book of *Oſney* it appears before, that *Decimatio* Nicholai *de* Stodeham *quam Fromundus* (*Capellanus*) *tenebat*, is granted by D'*Oilly*. Had not D'*Oilly* this from *Stodeham*? Or was *Stodeham* here one of his Bailiffs or Farmors, whoſe Tith he granted as Lord or according to covenant with the Leſſee? Other ſuch occurr ſometimes. And perhaps, *Decimæ hominum meorum*, & the like granted, may ſuppoſe a title poſſeſſed in the Tithes by the Lay grantor. And in the ſame Book of [c] *Oſney*, in a Paſſage written in a hand of about *Hen.* 5. touching the conveyances of Tithes by Lay-men to Monaſteries, it is related, that he that wrote it, ſaw *Quendam* Rogerum D'Oyly *Dominum cujuſdam partis de* Bampton *in Epiſcopatu Lincolnienſi ſuis Decimis ita uti, ut nunc uni nunc alteri*

[c] *In Biblioth. Cottoniana.*

de ſuis Valettis ipſas conferret annuatim qui ſibi in diverſis officiis miniſtrabant, until afterwards he erected a Chauntery with them in the Church of *Bampton*. Theſe Grants to his Valets, plainly were as Infeodations. And what elſe was in that known caſe of *Herne* and *d Pigot* in *Mich.* 39 & 40 *Elizab.* but an ancient kind of Infeodation, at leaſt an Inheritance of Tithes from immemorial time in a Lay man? That, and other like to it, might begin upon real compoſitions, and ſo the Tithes be derived out of the Church. But regularly, I think, at this day no kind of Infeodation is here allowable in Lay mens making title to a perpetual right of Tithes (except only by the latter Statutes of Diſſolutions) unleſs it either be derived from ſome old Grant of diſcharge from the Parſon, Patron, and Ordinary, (in which caſe, he to whom the Infeudation ſhould be made, could have it only as a Lay profit iſſuing out of the diſcharged land) or joyned with a Conſideration to be given for maintenance to the Parſon, by him that receives them; and this either from time immemorial, or by ancient compoſition. So I take the meaning of our reverend Judges to have been touching this point. In ſumm then we may affirm, that ſome ſuch ancient Infeodations have been in *England* as in other States; but, that of later time none are allowable (if derived from e other ancient original, than from the Statutes of Diſſolutions) unleſs

d *Report* 2. *fol.* 45. *a.*

e) Vide *in d. Commentarie, ibid.*

unleſs they be anciently derived out of the Church firſt by diſcharge, or appear to be but as a Reward given in pernancy, or as Conſideration for a Penſion or other competent Maintenance yearly payable to the Parſon. Which withal well ſtands with the common opinion of the original of ſuch Infeodations; whereof we have already *f* ſpoken. And whereas it hath been reſolved, that without theſe reaſons, a Lay man was not here capable, at the Common Law, of Tithes by pernancy; it well agrees with a Decretal of *g Alexander* the third, which forbids one that Married a Parſons ſiſter, to enjoy a Tith given him by the Parſon, as for the marriage portion, although the Parſon were ſtill living. But alſo, that we may not defraud you of any teſtimony of former times, that may ſeem obſervable touching theſe Infeodations, whereof ſo few examples and ſo little mention is in the Moniments of *England*, take this ſpecial Diſquiſition, written in a hand of about *Henrie* the fifth, in the Book of *h Oſney*, which would as well give light to the courſe of Arbitrary Conſecrations (before largly opened) as to theſe Infeodations, if it were of ſufficient credit. But you ſhall firſt have it compendiouſly delivered, and then judge of it. This title is put to it, *Qualiter Laici ad id privilegium pervenerint quod locis Religioſis illas* (Decimas) *conferre poſſint*. Then ſayes he that writes it; he had heard from

f *Cap.* 6. § 4.

g *Extr. tit. de Arbitris. c.* 3. *pervenit ad nos.*

h *In Bibliotk. Cottoniana.*

from a good Civil and Canon Lawyer, that had been preſent at the Diſputation of the point, in a caſe happening between a Religious houſe and a Parſon, for Tithes in the Parſons Pariſh, who claimed them *jure communi*, that the Advocate for the Religious houſe being put to make a ſpecial title againſt the Parſons common right, told the Court a long ſtory of Eaſtern holy VVars about *Pipins* time; and interpoſed ſomewhat of *Charles Martel*; and concluded, that the Pope and the Church every where granted, in reward to the Chriſtian Princes, for their Barons, Knights, and Gentlemen, that ſpent their blouds, labours, and eſtates in thoſe VVars, the priviledge of arbitrary diſpoſition of the Tithes of their lands; by reaſon of which Grant, they afterward made not only Arbitrary Conſecrations of them, but alſo Infeodations into Lay hands, according as the common opinion among the Canoniſts is too confidently received at this day. Then he tells us that before remember'd, of the Tithes in *Bampton*, and cites ſome texts out of the Decretals, that touch Infeodations. Next he relates, that among the Princes of the holy Warr, about *Martel* and *Pipins* time, the Duke of *Normandy* was a ſpecial one, whence he had alſo that priviledge touching Tithes, *pro ſe ac ſuis*, as the words are. And laſtly (to bring it into *England*) he thus concludes, *Et cum Dux Normanniæ* Willielmus *ad con-*

conquiſitionem Angliæ *veniſſet, quidam Miles ejus* Robertus d' Oylleye *nomine malens ſuas Decimas Deo commendare quam contra naturalem Eccleſiæ conſuetudinem ipſis uti, eas Eccleſiæ* S. Georgii *quam in Caſtria* Oxenford *conſtruxit, contulit, Et poſtea ad Monaſterium* Oſney *per Dioceſanum & Capitulum Lincoln. ac etiam per Advocatum Canonicè devenerunt.* But it all taſts of nothing but ignorance. For what touches *Martell* and his time generally, enough already is ſaid. And ſee but what a bold ignorance here was, to tell us, that the Duke of *Normandy* was one of the greateſt (*perſonis Regum exceptis*, as his Language is) that went in the holy War *in ſuccurſum Eccleſiæ Romanæ*, in thoſe times of *Pipin* and *Martell*? I would he durſt have told us alſo who had then been Duke of *Normandy*. Neither that title of Dignity, nor that name of the Countrey, were, till about C L. years after *Martell*, at all known. The Territory being then under the *French* Kings, who long after gave it to the *Normans*, and erected it into a Dukedome. Indeed the Duke of *Normandy* had good place in the later holy Wars, about M. X C V. but did not that make this advocate ſay, that the Duke of *Normandy* was a ſpecial Prince in the other alſo of *Martell's* time? Such of the later middle times ſtand not much upon the mingling of Stories, that differ in themſelves even many whole ages. Beſides, he tells us of ſtrange Princes names of

the Eaſt, that made the War againſt the Church. Plainly, the moſt pretended cauſe of the reſt that err herein as much as he doth, is the *Saracenical* War in *Martel*'s time, and that out of *Spain*, not from the Eaſt. And had it been ſo under *Martel*'s time, as it is uſually affirm'd; what had that been to *England*? But you ſee his providence for that matter, where he derives it from the Duke of *Normandy*. But what though there had been ſome ſuch Duke of *Normandy*, whoſe Succeſſor had afterward either conquered or inherited *England*? had therefore the old ſuppoſed priviledge of retaining or diſpoſing of Tithes, been thence communicated to his ſubjects of *England*? and that to the loſs of the Church here, that never could have gotten good by the ſuppoſed cauſe of the priviledge? All the Canon and Civil Law that the Advocate had, could never have proved ſuch a conſequent. It will ſtill remain moſt probable, if not clear, that what Infeodations were in *England*, had their original as well out of the right of arbitrary diſpoſition of Tithes challenged by the Laity, without the grant of the Pope or Church, as out of Compoſitions or Conveyances from the Clergy; according as in other States. For no ſufficient Story, no credible Monument, no Paſſage, or Teſtimony of worth, can juſtifie that general right of retainer or diſpoſition to have been given by the Clergy, or Pope, upon

upon any cauſe whatſoever, though the Canoniſts and others that follow them, cry againſt it, *uſque ad rævim.* The uſe of Infeodations, before thoſe later holy Wars, we have already ſhew'd. And that no uſe of them could be about *Martell*'s time, is not leſs apparent, by what is alſo before delivered. But beſide this blind teſtimony of the ground of Conſecrations or Infeodations: for *England* eſpecially, you may take that (as it is) alſo of *i Lindwood*, who thus ſpeaks touching the Portions which Religious houſes had. *Hæ Portiones* (ſaith he) *potuerunt perveniſſe ad locum Religioſum de conceſſione etiam Laici cum ſolius Dioceſani conſenſu de Decimis vel proventibus quas Laicus talis ab Eccleſia alia habuit in feudum ab antiquo*, according to that in *tit. de his quæ fiunt a Prælatis ſine aſſ. cap. c. cum Apoſtolica.* And he adds, that this is only true, if thoſe Tithes were infeodated before that Council of *Lateran* of M. C. LXXIX. And then concludes with, *Nam ante illud Concilium benè potuerunt Laici Decimas in feudum retinere & eas alteri Eccleſiæ vel Monaſterio dare. Non tamen poſt tempus dicti Concilii.* For his interpretation of the Council, enough before, towards the ends of the VI. and X. Chapters. But doth not *Lindwood* here ſuppoſe ancient Infeodations of Tithes (at leaſt created by Churchmen) in *England*? Doth he not thence fetch the original of Portions belonging to Religious houſes in *England*?

i *Tit. de locato & conducto c. licet bona. verb. portiones.*

commonly, though he writ as a Canoniſt, yet he adds the ſpecial cuſtom of *England* if he ſpeak of any Canon Law, which he thinks had not place here; but he excepts not *England* in this, but implies it; therefore doubtleſs, he ſuppoſed a common uſe of ancient Infeodations among our Anceſtors: but I doubt he had not better ground for it than what he found in others of his profeſſion, that had remember'd the frequent uſe of Infeodations in other States before that Council: and he ſo applied it equally to his own Countrey, and with them takes the Infeodations to have had original only from the Grants of Church men: therefore I value his teſtimony here but as of a common Canoniſt, and not ſufficient to ſatisfie us touching our own Countrey: neither in his age were the particulars of practice of the time before that *Lateran* Council, or of the time of creation of Infeodations in other places, enough known among Lawyers. I add only one note out of *Bracton* that may touch Tithes infeodated or turn'd anciently here into Lay fee, and conclude this matter. He *k* ſpeaking of Land demiſed and recovered by the Legatary, tells us ſome opinion was of his time, that ſuch Land after the recovery *iterum incipit eſſe Laicum feodum & non ante; quod non erit de Decimis, cum ſemel efficiantur Laicum feodum; nunquam reincipient eſſe Decimæ, & hæc vera ſunt ſecundum R. & alios.* Did not he here ſuppoſe

k *Lib. 5. tract. de Exceptionibus cap. 12. fol. 411. b.*

ſuppoſe Lay infeodations of Tithes in *England?* let the Reader judge. By the way, I note, that paſſage is corrupted in the print. The beginning is *Item* for *Iterum*, and that *R. & alios* (which I think ſtands for *Roger de Thurkelby* a great Judge of that time) is *Biaſtos*: but according to my Ms. *Bracton*, I have thus alter'd it. You may conſider alſo if ſome Infeodations came not out of Lay-mens enjoying of whole Churches with their poſſeſſions about the *Norman* Conqueſt: it is frequent in *Domeſday*, to find that ſuch a Layman *tenet Eccleſiam* of ſuch a place, and ſold it to ſuch a one: and in the claims of *Yorkſhire* there, the Entry is, *ſuper Eccleſiam S. Mariæ de* Moſelege *habet Rex medietatem eleemoſynæ feſtorum S. Mariæ quæ jacet ad* Wackefeld. *Omne aliud habet* Ilbertus *& Presbyter qui Eccleſiæ ſervit, &c.* Where Tithes were in that time annext by continuance of payment or Conſecration to Churches, perhaps they might in like manner as theſe Offerings or whole Churches, come into the Lay hands: but I leave this to the judgement of my Reader. And hereof thus much.

II. Now for *Exemptions* or diſcharge from payment; we have anciently had them here, and ſtill retain ſome of them in the practiſed Law: and that originally either by Priviledges, Preſcription, or Grants and Compoſitions and Unity of poſſeſſion. The *Priviledges* have been either ſuch as were ſpecially allow'd and limited to

the Orders of the *Templars*, *Hoſpitalers*, and *Ciſtercians* by the Cenerał Council of *Lateran*, held in 17 of King *John* (of which more particular narration is before made) or by new Bulls for the diſcharge of this or that Monaſtery or Order, at the Popes pleaſure. By reaſon of the firſt kind of priviledge, thoſe three Orders held their Lands diſcharged of payment ſo long as they manured them in their own occupation: at leaſt all ſuch Lands as they had purchaſed before the General Council: and by the ſecond kind ſometimes whole Orders were diſcharged, as for example, that Bull to the *l Præmonſtratenſes* in general given by Pope *Innocent* the third, grants them that of their own culture or other improvements they ſhould pay none. Sometimes ſpecial Monaſteries, as in that of the ſame Pope to the *m* Abbey of *Chertſey*. *De novalibus vero quæ propriis manibus aut ſumptibus colitis, aut de veſtrorum animalium nutrimentis, ſive de hortis & virgultis, aut piſcationibus veſtris, nullus a vobis Decimas exigere, vel extorquere præſumat, ſed eas eleemoſynæ aut pauperibus Monaſterii veſtri juxta quod tu fili Abbas poſtulaſti a nobis, præcepimus aſſignari.* What force by the common Laws of this Kingdom, ſuch a Papal priviledge in ancient time alone had, I abſtain here to diſpute: and although other examples enough might out of originals be brought of the like, yet I touch not any of them neither, leſt unawares I might give occa-

l Innoc. 3. in Epiſt. Decret. lib. 1. pag. 202.

m Ibid. lib. 2. pag. 410. Videſis Extr. tit. de Decimis c. 3. Ex multiplici.

occaſion of ſome private controverſie. But they had their force in the Canon Law here, and being ſo allow'd in allegations againſt Libels for Tithes, were ſtrengthened alſo at length (eſpecially thoſe which were of the ancienteſt) with preſcription of time, inſomuch that from them originally divers Lands of diſſolved Monaſteries remain to this day diſcharged of payment. But in 2 *Hen.* 4. *cap.* 4. an Act of Parliament is made againſt thoſe of the *Ciſtercians* here, which purchaſed Bulls of Exemption for their demiſed Lands: and thoſe of the Order and others putting ſuch Bulls in execution are made thereby ſubject to the puniſhment contain'd in the Statute of 13 *Rich.* 2. of *Præmunire*. Diſcharges by immemorial *Præſcription* of paying no Tithes (of things commonly and of their nature titheable) nor any thing in lieu of them, are by the later common Law (ſince their Parochial right eſtabliſhed about the time of King *John*) allow'd only *n* to ſpiritual perſons, but to no Lay-man. The Laity being ſince that time held incapable of Tithes both by pernancy (ſaving in ſuch a ſpecial caſe where continual conſideration was given to the Church, as in that Caſe before of *Herne* and *Pigot*) in their own right, as alſo by diſcharge upon bare preſcription alone, ſaving only in Caſes within the Statutes of Diſſolution of 31 *Hen.* 8. and 1 *Ed.* 6. and the Statute of 32 *Hen.* 8. that warrants common Infeodations

n Vaux Rep. part. 2. *fol.* 44. *& Fitzh. Nat. Br. fol.* 41. *G.*

ons of them: and ſo is the practiſed Law of this day. For, by thoſe Statutes, lay Patentees of lands of Tithes have like priviledge of diſcharge and title as the ſpiritual perſons, whoſe Corporations were by them diſſolved, before the diſſolution enjoyed. Of the *Hoſpitalers* diſſolved in 32 *Hen.* 8. I purpoſely abſtain to ſpeak. To this of Preſcription, may be added that of Unity of Poſſeſſion. For if any religious houſe diſſolved in 31 *Hen.* 8. held the Rectory of Dale and Lands in the Pariſh immemorially paying no Tithes, this Unity diſcharges alſo the Patentees at this day, in ſuch ſort as the Monaſteries were diſcharged. But by Compoſitions and Grants every man, as well *Lay* as Spiritual, by the common Law (before the Statute of 13 of *Elizabeth*, made againſt Leaſes and Grants of Parſons) might be diſcharged of Tithes; as if the Parſon, Patron and Ordinary join'd in it to the Pariſhioner either for conſideration continuing (as in real *o* Compoſition) or for other arbitrary cauſes not appearing to poſterity as in Grants by all three, or rather in Grants by the Parſon, and Confirmations by the Patron and Ordinary. And it is provided by the Statute of 2 *Ed.* 6. *cap.* 13. that *no perſon ſhall be ſued or otherwiſe compelled to yield, give, or pay any manner of Tithes for any Mannors, Lands, Tenements, or Hereditaments which by the Laws and Statutes of this Realm, or by any Priviledge or Preſcription are not chargeable*

o Regiſt. Orig. fol. 38. b. Fitzh. ubi ſupra.

able with the payment of any such Tithes, or that be discharged by any Composition real. But although a Lay-man may not be discharged of all payment by meer Prescription (unless he begin the Prescription in a Spiritual person) yet for diminishing the *Quota* in payment only of a less than the Tenth, he may *p* prescribe, that is, *De modo decimandi*: and to that purpose an immemorial custom of a whole Town or Mannor holds place at this day. So was the Law *q* anciently also. Besides these discharges, some may here expect that part of our Laws, which with us (as the *Phillippine* in *France*, and the *Carolines* in *Spain*) discharge some things from payment of Tithes, and seem to permit some customs *de non Decimando*. But for that matter; so much as upon consideration was thought fit to be sparingly said of it, is referred to the passages in the next Chapter, that touches ancient prohibitions *de non Decimando*. Neither indeed doth that part of our *English* customs belong to the title of Exemption or discharge: for Exemption and Discharge are properly singular rights to this or that person or Land, and against the currant of the practised Law: but those things touching which any such prohibitions *de non &c.* by our Law should be granted, are supposed generally according to the reasons and practice of the Laws of *England*, of their own nature, not titheable. So that not so much a discharge is found in

p Vide *lib. Intrat. nov. tit. Prohibition* §. 6. & *Rep.* 2. *part. fol.* 44.
q 8 *Ed.* 4. *fol.* 14.

that courſe as a prevention of an unlawful charge which the Canons would lay upon that which the Laws of the Kingdom account not at all in its own nature chargeable. But thereof ſomewhat more anon.

CAP. XIV.

I. *The juriſdiction of* Eccleſiaſtick cauſes, *in the* Saxon *times, excerciſed by the* Sheriff *and the* Biſhop *in the* County Court: *and among them that of* Tithes *alſo was then to have been there determin'd. The* Biſhops Conſiſtory *ſevered from the* County Court *by* William *the firſt.*

II. *After the* Normans, *Original ſuits for* Tithes, *were as well in the* Temporal Courts *as in the* Spiritual: *and that continued till* Henry *the ſecond or about King* John.

III. *Of the time ſince about King* John *or* Henry *the ſecond. Of the* Indicavit *and the* Writ of right of Advowſon of Tithes. *What the Law was in an* Indicavit *before that Statute of* Weſtm. 2. *A touch of ancient* Prohibitions, De non Decimando.

IV. *Writs of* Scire facias *for* Tithes. Enqueſts *taken upon Commiſſion to enquire of the right of* Tithes.

V. Fines *levied of* Tithes (*in the time of* ichard *the firſt, of King* John, *and* Henry *the third*) *upon Writs of* right of Advowſon.

VI.

VI. Scire facias *by the* Patentees *againſt the perſon of* Tithes *granted by the* King.

VII. Command of payment *by the Kings Writ. And of* Tithes *in* Foreſts. Trial *of the right of Tithes* incident *in ſome iſſues.*

AS a corollary to the former parts that directly concern the *payment* or *conſecration* of *Tithes*, we thought fit to add here in the Concluſion of the Treatiſe, the *Hiſtory alſo* (but only the Hiſtory) *of the juriſdiction of Tithes* in this Kingdom. It is clear by the practiſed common Law, both of this day as alſo of the ancienteſt times that we have in our year books, that regularly the juriſdiction of ſpiritual Tithes (that is, of the direct and original queſtion of their right) belongs, I think as in all other States of Chriſtendom, properly to the *Eccleſiaſtical* Court: and the latter Statutes that have given remedy for Tithes infeodated from the Crown after the Diſſolution, leave alſo the ancient right of Juriſdiction of Tithes to the Eccleſiaſtick Courts. But how the difference of Ages hath herein been amongſt us, is little enough known even to them which ſee more than vulgarly. In declaration thereof, we ſhall aptly divide the time tripartitely; into that of the *Saxons*; that from the *Normans* till about *Henry* the ſecond; and what interceeds from thence till this day.

I. In the *Saxon* times a jurisdiction of Ecclesiastick causes (among which you may reckon that of Tithes, although not much sign of it, in exacting payment of them, appears in the moniments of that age) was exercised jointly by the *a* Bishop of the Diocese, and by the Sheriff or Alderman of the ſcipegemot or hundred, or County Court, where they both sate, the one to give Goder right, the other for puſulder right that is, the one to judge according to the Laws of the Kingdom, the other to direct according to Divinity: and in the Laws made for Tithes by *K. Edgar* and K. *Knout*, you see upon default of payment it is ordained, that the Bishop and the Kings Bailiff, or Sheriff, with the Bailiff of the Lord of the Land, should see that just restitution should be made: particulars of the excercise of this kind of jurisdiction, I have not seen. But at the *Norman* Conquest, this kind of holding Ecclesiastick pleas in the Hundred or County Court, was taken away. Remember that as at this day most of the Pleas Ecclesiastick are in the Ordinaries Court within the Diocess, so most suits in the secular or common Law were Viscontiel and held in the County or Hundred Court of the Sheriff in those ancienter times, which may best be observed out of one of the books of *Ely* *b* the most especial moniment that is extant, for the holding of Pleas in the *Saxon* times. That alteration at the *Norman*

a Videsis *Leg. Ethelstani* apud *Fox. in Eccles. Hist. lib.* 3. *pag.* 135. *col.* 1. Hinc debent Episcopi &c.

b *In Biblioth. Cottoniana.*

Norman Conqueſt, was by a Law made by the Conquerer, and directed to all Tenants in the Dioceſs of *Remy*, that was firſt Biſhop of *Lincoln* whither his ſee was then tranſlated from *Dorcheſter*: and although it be ſent in the direction by name to the n only, yet it ſeems, it grew afterward to be a general Law, no otherwiſe than the Statute of *Circumſpectè agatis*, that hath ſpecial reference only to the Biſhop of *Norwich*. The words of it *c* as they are recorded, are, "Sciatis vos omnes & cæteri mei fi-"deles, qui in *Anglia* manent, quod Epiſcopa-"les leges, quæ non benè ſecundum ſanctorum "Canonum præcepta, uſque ad mea tempora "in regno *Anglorum* fuerunt, communi Con-"ſilio Archiepiſcoporum meorum & cætero-"rum Epiſcoporum & Abbatum, & omnium "Principum Regni mei emendandas judicavi. "Propterea mando, & Regiâ authoritate præci-"pio, ut nullus Epiſcopus vel Archidiaconus "de legibus Epiſcopalibus amplius in *Hun-*"*dret* placita teneant, nec cauſam quæ ad regi-"men animarum pertinet, ad judicium ſecula-"rium hominum adducant, ſed quicunque ſe-"cundum Epiſcopales leges, de quacunq; cau-"ſa, vel culpa interpellatus fuerit, ad locum "quem ad hoc Epiſcopus elegerit & nomina-"verit, veniat, ibique de cauſa ſua reſpondeat, "& non ſecundum *Hundret*, ſed ſecundum Ca-"nones & Epiſcopales leges rectum Deo, &

c In Rot. Inſpex. Chart. 2. Rich. 2 pro dec. & cap Lincoln. mem. bran. 12. Idem eſt quod habetur Anglicè *apud Foxum Hiſt. Eccleſ. Angl. lib. 4. p. 154. col. 2.*

"Episcopo suo faciat. Which I rather transcribe here, because also it seems to give the original of the Bishops Consistory, as it sits with us, divided from the Hundred or County-Court, wherewith, in the *Saxon* time, it was joyned. And in the same Law of his, is further added, *Hoc etiam defendo ut nullus Laicus homo de legibus quæ ad Episcopum pertinent se intromittat &c.*

II. Afterward, under the succeeding Princes, till about *Henry* the second, it seems, that the Jurisdiction of Tithes was excercised in both Courts, as well Secular as Spiritual, and that by original suit; not only in the one by the first instance (as regularly the latter common Law would have it) and in the other by Prohibition only. I know, little proof will serve most men to justifie, that the Spiritual Court had then a Jurisdiction of them: but also some testimony I have seen of a particular recovery of Tithes in the Bishops Court in that age. The Monks of *Northampton*, under *d* King *Stephen*, recovered two parts of the Tithes of the demesnes of *Wullaveston* against *Anselm de Cochis*, before *Robert* Bishop of *Lincoln*, as Ordinary. *In plenaria Synodo coram* Roberto *Lincolniensi Episcopo disrationaverunt*, as the words are in a sealed Charter of *Simon* the second, Earl of *Northampton*, then living; wherein he testifies both the recovery, as also *Anselm's* confirmation of the same two parts, accor-

d *Charta Simonis Comitis North in* Thesaur. Cotton.

according to the recovery, and addes alſo of his own, *volo & præcipio ut illam Eleemoſynam habeant & teneant liberam & quietam.* And to this you may add the Appeals to *Rome* from the Audience of the Arch-biſhop of *Canterbury* and other Eccleſiaſtick Coniſans touching *e* Tithes, that are (as the ancienteſt Precedents of any ſuch Eccleſiaſtick proceeding in *England*) remaining among the Epiſtles of *John* of *Salisbury*, a great favorite of *Thomas Becket* Arch-Biſhop of *Canterbury* in the beginning of *Henry* the ſecond. In one of them it is obſervable by the way *f*, that one *Richard*, the Tenant of Land lying within the Pariſh of *Lenham*, being ſued in the Audience by *Andrew* the Rector for his Tithes, alledges in Court, *Sibi à nobili viro* Willielmo *fratre Regis, Domino ſuo, eſſe prohibitum, ne, eo abſente, ſuper Decimis de quibus agebatur, cauſam ingrederetur.* Yet the Court ceaſed not therefore to proceed; but Sentence being ready to be given for the Rector, the Cauſe was ſent to *Rome*, upon the defendants Appeal. And although the *g* title were only upon the Grant of him that arbitrarily conſecrated, yet was it ſometime determined in the Spiritual Court. But alſo that in this elder age before about the time of *Henry* the ſecond, the Kings ſecular Courts of Juſtice originally held plea of the right of Tithes, is as plain by infallible proof of ancient Moniments. To begin with the eldeſt times of this.

e I. Sarisbur. *epiſt.* 21. 84. 92. 109. & 133.

f Idem Epiſt. 109.

g Append. ad Concil. Lateran. part. 47. cap. 5.

h *Chart. antiq. E.E. 1. in Arce Lndon.*

this part of our Diviſion; there remains *h* yet recorded a Plea held *apud Fulcardi montem*, under *William* the ſecond, between the Monks of *Salmur* and *Philip* de *Braioſa*; wherein, the Monks claiming againſt him and the Abbey of *Fiſchamp* (in *Normandy*) *Parochiam quæ ad Sanctum* Cuthmannum *pertinet de Caſtello de* Stainings (theſe are in *England*, I think in *Suſſex*) *de* Bedingas, *&* *de* Bedelingtona; by the teſtimony of *Robert* Earle of *Mellent*, a Judgment of the Conquerors time is cited, by which the Abbey of *Fiſchamp* had the pariſh of S. *Cuthmann* adjudged to it in the Kings Court. And thereupon (it being denyed by none) it was now again adjudged, that the Monks of *Salmur* ſhould reſtore whatſoever they had taken *poſt mortem Regis in Decimis & Sepulturis & Oſfrendis &c.* to the Church of *Fiſchamp*. And while ſome delay was in the execution, the King ſent his Writ *ad Juſticiarios ſuos de Anglia*, that is, to *Ralph* Biſhop of *Chicheſter*, *Randol* his Chaplaine, *Hamon* his Sewer, and *Urſo* de *Abetot*, whereby he commanded, *Ut facerent Eccleſiam S. Trinitatis* (that is of *Fiſchamp*) *habere totam Parochiam S.* Cuthmanni *& Decimas & Corpora & omnes Conſuetudines tam de vivis quam de mortuis ſicut pertinebant ad prædictam Eccleſiam S.* Cuthmanni *antequam* Willielmus *de* Braioſa *haberet Caſtellum de* Bembra (*Bramber* Caſtle, in *Suſſex*, given by *William* the firſt to *William de Braioſa*)

Braioſa) *& quicquid de ſupradictis cuſtumis Monachi de* Salmur *ceperint reddi*. The right of Tithes and Offerings appears here plainly to have been determined in the Temporal Court by two Judgements, the one under the Conqueror, the other under his ſon *William*. And it is found upon record, that about *i* 10 *Hen.* 1. a Writ was ſent to *Manaſſes Arſic*, out of whoſe Lands, divers Tithes were conveyed into the Monaſtery of *Fiſchamp*, commanding him, *Quatenus Decimas à parentibus ſuis inviolabili jure conceſſas & datas* Fiſcamenſi *Eccleſiæ, Monachos ſuos apud* Coges *degentes omnes in pace & quiete habere faciat; ſinon, Juſtitiæ Regis facerent.* Whereupon he ſends his Precept to all his Tenants of ſuch Lands, commanding them to make payment. *Si quis autem aliter* (ſaith he) *facere præſumpſerit, Regis iræ & noſtræ pœnam ſine dubio patietur.* So among the Liberties of Saint *John* of *Beverley* [k], this Writ is found of *Henry* the firſt. "Henricus Rex Anglorum *Osberto* Vicecomiti de *Eboraco* & *Geraldo* de *Brideſala* ſalutem. Præcipio vobis, ut faciatis habere Eccleſiæ Sancti *Johannis* de *Beverlaco*, Decimas ſuas ſicut unquam melius habuit, in tempore Regis *Edwardi* & patris mei, de illis videlicet terris omnibus de quibus homines Comitatus *Eboraci* teſtimonium portabunt quod eas habere debent. Et quicunque detinuerit, ſciatis quod ego volo ut

i *Chart. antiq. lib.* S. 7. vide ſupr. c. 8. §. 17.

k Ms. *In Bibl. Cottoniana.*

"ut rectum faciat Deo & S. *Johanni* & mihi. "T. *Ran.* Cancellario, & Comite de *Mellet*, a- "pud *Londonias*, &c. What is this elſe than a kind of *Juſticies* to the Sheriff of *Yorkſhire*, for the right of Tithes determinable by the Countrey? Doth not *homines Comitatus Eboraci* denote as much? Of the ſame time alſo, in a *l* Volume of Conſtitutions and other things belonging to the Church of *York*: "Henricus Rex An- "glorum *Osberto* Vicecomiti de *Eboraco* ſalu- "tem. Mando tibi & præcipio ut Archiepiſco- "pum *Girardum* permittas & facias honorificè "tenere Eccleſias meorum propriorum Mane- "riorum quas S. *Petro* & eidem dedi cum om- "nibus Capellis ſuis, & cum omnibus Decimis "ſuis, & cum omnibus terris ſuis, videlicet Ec- "cleſiam de *Bokelinton*, & de *Driffeild*, & de "*Killum*, & de *Pickering*, & de *Burgo*. *Waltero* "& *Euremaro* Miniſtris de *Driffeild* præcipio "ut Decimas de hoc præterito Auguſto, quas "non reddiderunt, plenariè reddant ſicut Ec- "cleſia eas juſtè habere debet & ſicut unquam "eas melius habuit tempore patris mei ſive meo "antequam eas dediſſem S. *Petro*, & videant ne "ampliùs inde clamorem audiam: ſi quis inde "injuriam fecerit Archiepiſcopo, tibi, *Osberte* "Vicecomes, præcipio ut plenariam rectitudi- "nem inde facias. Teſte *Rogero* Epiſcopo *Sa- "risburienſe* apud *Weſtmonaſterium* in Natali "Domini. *And another is there, in theſe words*: Hen-

l In Bibl. autorii.

"Henricus Rex Anglorum *Anſch.* Vicecomiti "& omnibus Præpoſitis & Miniſtris ſuis de "*Driffeild*, & de *Pokelinton*, & de *Killum*, & de "*Pikering*, & de *Burt*, ſalutem. Volo & præ-"cipio quod faciatis habere *Hugoni* Decano & "Clericis ſuis benè & plenariè omnes rectas "Decimas de Dominiis meis in omnibus rebus "per hæc prædicta Maneria mea, & de omnibus "Parochianis, qui ad Eccleſias horum prædi-"ctorum Maneriorum meorum pertinent. Si-"militèr facite ei habere benè & plenariè & "Decimas & omnia jura prædictarum Eccleſia-"rum in terris & capellis. Quia pro ſalute ani-"mæ meæ & omnium anteceſſorum meorum "beato *Petro* eas conceſſi in Eleemoſynam. No-"lo autem quod pro recti penuriâ quicquam "perdant quod juſtè habere debent. T. apud "*Eborum.* And about *6 Hen.* 2. when *Turſtin Fitz-Simon* uſurpt the Tithes of *Mercham*, belonging to the Abbey of *Abingdon*, one of the Monks were ſent over to the King into *France*, *Ut per ejus juſtitiam & autoritatem* (as my *m* Author ſays) *rectum ſuum Eccleſiæ ſuæ reſtitueretur. Quod & ita factum eſt. Rediens enim frater qui miſſus fuerat, breve à Rege tranſmiſſum in hæc verba reportavit.* Then the Writ follows, directed from *Tours* to the Sheriff of *Barkſhire*. "Hen-"ricus Rex *Angliæ* & Dux *Normanniæ* & *Aqui-"taniæ* & Comes *Andegaviæ*, Vicecomiti ſuo & "miniſtris ſuis de *Berchefira* ſalutem. Si Eccle-

m Codicis Abindonenſis Ms. Bibl. Cot on.

"ſia de *Albendona* habuit Decimam de *Mer-*
"*cham* ad luminare Eccleſiæ tempore *Henrici*
"Regis avi mei & anno & die quo fuit mortuus
"& vivus & poſt, & inde ſit diſſeiſita injuſtè &
"ſine judicio, tunc præcipio quod ſine dilatione
"inde eam reſaiſiatis, Et ita benè & in pace &
"liberè & juſtè tenere faciatis ſicut meliùs &
"liberiùs tenuit tempore *Henrici* Regis avi mei,
"Et præcipio quod quando *Turſtinus* filius *Si-*
"*monis* redierit in Anglia, quod Abbas *Abben-*
"*doniæ* plenum rectum habeat de terra quam
"prædictus *Turſtinus* filius *S.* tenet de feudo
"Abbatiæ. Et ſi Abbas poterit diſrationare
"quod non defecerit de recto prædicto T. in
"Curia ſua, Abbas inde ei in Curia ſua rectum
"teneat. T. Magiſtro *Johanne* de *Oxenford* a-
"pud *Turonem.* The Sheriff, by vertue of this Writ, upon enquiry of the point of it in his County-Court, reſtored the Abbey to the poſſeſſion of thoſe Tithes. The words of the Book are, "Cum verò perlectum eſſet Regis breve in
"pleno Comitatu & manifeſtè compertum to-
n L. quòd. "tius Comitatus teſtimonio *n* quoniam præfata
"Decima ad luminare Altaris S. *Mariæ* perti-
"neret, & quod eam *Turſtinus* injuſte tenebat,
"Vicecomes ex parte Regis illum diſſaiſiavit;
"& eam Altari cui adjacebat reſtituit. What can be plainer, than that in thoſe times (if theſe examples have credit, as indeed they cannot juſtly be impeached) the Temporal Courts held Juriſdiction

riſdiction of Tithes in point of right; and not only the Spiritual: and to confirm it, we add alſo the authority of *John* of *Sarisbury* o that then liv'd: he in an Epiſtle to the Biſhop of *Exceſter* relating ſome of thoſe Poſitions of the common Laws; or the *Avitæ conſuetudines* (as they called them) which *Thomas* Archbiſhop of *Canterbury* about 12 of *Hen.* 2. ſo much withſtood, mentions one to be *Quod Laici, ſive Rex, ſive alius, cauſas de Eccleſiis & Decimis tractent:* which well agrees with the authorities before cited. But this was utterly diſallow'd then by the Pontificial Laws, as, beſide the authority of the common Canons, may be ſeen in an Epiſtle of *Alexander* the third, to the p Biſhop of *Exceter* and the Dean of *Chicheſter*, wherein it appears, that one *William* a Clerk of *Chicheſter* had appealed to the Pope about Tithes, the ſuit being 'twixt him and the Parſon of *Curket*: and the Parſon had on the other ſide appealed *Ad audientiam Domini Regis:* whereupon ſays the Pope, *Quoniam nemini liceat ſuper rebus ſpiritualibus ad ſecularem Judicem appellare*, they ſhould enquire of the matter, deprive the Parſon, and ſend him to *Rome*.

o *Epiſt.* 159.

p *Apud Conc. Lateran. part.* 10. *(a).* 26.

III. The frequency of ſuch original ſuits for Tithes, in the Temporal Courts (through the Canons and the power of the Pope increaſing, and growing more dreadful to *Henry* the ſecond, and King *John*) became about their times

to be, it ſeems, more out of uſe, and poſſeſſed rather by Eccleſiaſtique juriſdiction. Nevertheleſs in the ſundry ages ſince, the determination of the right and payment of Tithes hath been ſubject to the temporal Courts, by divers kinds of original proceeding, which for orders ſake may be all comprehended in theſe Five. I. By *Prohibitions* touching the *modus* or Cuſtoms of Tithing, or other matter concerning the Kings [q] right, triable only in his own Court, or the like. II. By the Writ of *Right of Advowſon* of Tithes, whereto you muſt annex the writ of *Indicavit*; that is but a ſpecial prohibition making way for the Writ of Right of Advowſon. III. By *Scire facias*. IV. By bare proceſs of command of payment. V. By the actions upon the late Statutes of 32 *Hen.* 8. and 2 *Ed.* 6. For the firſt and laſt of theſe; becauſe they are now both in common practice, and thence known enough in general to every man, I abſtain purpoſely to ſpeak more of them; ſaving only that for the firſt; out of the more ancient ages, I obſerve ſomewhat by the way which may belong to the uſe of the preſent. In 21 *Hen.* 3. when all the Clergy of *England*, in the National Synod held at *London*, under *Otho* the Popes Legate, made ſupplication to have redreſs from the King, of ſome grievances, [r] one was, *Quod judices ſeculares non decidant cauſas Eccleſiaſticas in foro ſeculari, &c. & utrum dandæ ſint Decimæ de Lapicidinis, vel Syl-*

[q] Vide *Fitzh. Nat. Br. fol.* 40. *N.*

[r] *Annal. Burton Monaſt.* in Bibl. *C.C.C. Oxon. Allen. Oxon. ſub ann.* 1237.

Sylvicediis, vel Herbagiis, vel Paſturis, vel de aliis Decimis non conſuetis: which ſhews that the temporal Courts alſo in thoſe elder times, determined what was titheable or not, and ſo made prohibitions *De non Decimando*, according to the Proceſſes in *France* upon their *Philippin*, and in *Spain* upon the *Carolin*, and according to that note in the *ſ Regiſter* and *t Fitzherbert* touching the Juſtices determination of what is titheable: agreeing to this is a Caſe of 8 *Hen.* 3. *u* where in a prohibition was granted againſt a Parſon that ſued for the Tithes of Rent. But you ſhall have as it is in the Record. *Warwick.* Ma- "giſter *Euſtachius* de *Ceſtreton* attachiatus fuit "ad reſpondendum *Hugoni* de *Lege*, quare "contra prohibitionem, &c. trahit eum in pla- "citum in Curiam Chriſtianitatis de Laico "feodo ipſius *Hugonis* in *Ceſtreton*; unde Idem "*Hugo* queritur quod ipſe exigit ab eo in Cu- "ria Chriſtianitatis de certa pecunia pro Deci- "mis molendinorum, & certum pratum, ſcili- "cet tres acras prati, & præterea de Wareto "ſuo; & de terris incultis ſi illis locaverit ipſe "petit Decimum denarium, &c. Et Magiſter "*Euſtachius* venit & defendit contra eum & "contra ſectam ſuam, quod nunquam traxit "eum in placitum de aliqua re certa niſi tantùm "de Decimis fœni & molendinorum ſicut Deci- "mæ inde dari debent, nec aliquam acram pra- "ti petit nec denarios de molendinis, nec ali- "quid

ſ Fo'. 54. b.
t N. B. fol. 53.

u *Placit. & Inquiſit. 8 Hen. 3. in Arca Lond.*

"quid de Wareto vel terra nisi tantùm garbas;
"& ideò præceptum est eidem *Eustachio* quod
"de nullo placito de cætero sequatur in Curia
"Christianitatis, nec de aliquo Laico feodo nec
"de aliquo quod sit contra Coronam Domini
"Regis. But, to leave this and to go to the II. and III. and IV. courses of proceeding for Tithes in temporal Courts, which are not so obviously known; for the II. touching the Writ of *Right of Advowson of Tithes*, and the *Indicavit*: it hath been clear ever since the Statute of *Westminster* 2. *cap.* 5. and of *Circumspectè agatis*, both made in 13 *Ed.* 1. (this as well as the other long since being receiv'd into practice by the name of a Statute, and so called in Acts of Parliament; although it were anciently reputed rather as an Ordinance made *x* by the King and Prelates) that if *A.* Parson of *Sale* (for example's sake) libel against *B.* Parson of *Dale* in the spiritual Court, for so much Tithes and Offerings, possessed by *B.* as amount to the fourth or a greater part of the value of the Church of *Dale*, *B.* may have him prohibited by an *Indicavit* directed to him and the spiritual Judge, after which the Patron of *A.* hath no other remedy for himself or his Incumbent (what right soever they have) than to bring a Writ *of Right* in the common Pleas, *of the Advowson* of that fourth part, against the Patron of *B.* in which Writ, the right of those Tithes must be tryed by the com-

x 16 *Ed.* 3. *tit. Jurisdiction* 28. & *Sec Cosins Apologie, part.* 1. *pag.* 57, &c. & *Rot. Parl.* 25 *Ed.* 3. *nr.* 62.

common Law: and herewith expreſly agrees the Statute of *Articuli Cleri*: and the reaſon is, becauſe that if the determination of this Plea ſhould be allowed to the ſpiritual Court, then might the Patrons Advowſon of ſuch a part be there loſt by judgment according to the Canons, whereas the right of Advowſon and Patronage of Churches and Tithes only belongs, by our ancient Law and at this day, to the ſecular Court. Neither is the Writ ſo much of the Tithes as of the Advowſon of the Tithes; *Præcipe A.* (ſo are the words) *quod reddat B. advocationem Decimarum tertiæ* vel *quartæ partis Eccleſiæ de C. &c.* And however by the Canon Law the right of Tithes be meerly ſpiritual, and ſo not due to the Rector ſo much by reaſon of his preſentation from the Patron, as of the common right challenged by the Miniſtery (whereupon alſo *a Lindwood*, like a Canoniſt, thinks it not prejudicial to the Patron, which way ſoever the Tithes alone be determined of, in regard that all the Patrons intereſt is, he ſaies, originally in the foundation, building, or endowing of the Church with Manſe, Glebe, or Rent, and hath no relation to the Tithes which by common right are received without his Donation) yet by reaſon it ſeems both of our Ancient practiſed Law of Dotation of Churches by arbitrary conveyances of Tithes, at the owners pleaſure, in which doubtleſs Patrons very frequently *b* encreaſed

a *Conſtit. Provinc. it. de foro competent. c. Circumſpecte. verb. quarta pars.*

b Videſis *Matth. Paris. pag. 716. lin. 40.*

the revenues of foundations with the Tithes of their demeſnes; as alſo of that other ancient uſe of Inveſtiture, wherein the very intereſt of all the Glebe, Tithes annext, and other revenues, was transfer'd into the Encumbent by the Patron; it was thought fit that the Advowſon of the Tithes alone ſhould be equally reputed, for what concerned the Patron, with any other part of the Churches revenue. And the Law hath been clear thus, and ſo ſtill practiſed *c* ſince the Statutes before cited, they permit not the ſpirituall Court to hold Plea of Tithes of the value of the fourth part, where the Patronage is queſtionable, but will have the Advowſon thereof tried always by the common Law after the prohibition of *Indicavit*, which (being purchaſed as well at the ſuit of the Patron as of the Parſon) recites that the Parſon defendant in the ſpiritual Court *Tenet* d *medietatem* or *quartam partem omnium Decimarum provenientium de &c. de advocatione* of the Patron &c. And then, *Quia manifeſtum eſt quod prædictus* the Patron *jacturam advocationis Decimarum prædictarum incurreret ſi prædictus Rector in cauſa illa* (that is the Parſon plaintiff) *obtineret*, *vobis prohibemus ne placitum illud teneatis in Curia Chriſtianitatis donec diſcuſſum fuerit ad quem illorum pertineat earundem Decimarum advocatio.* And then according as the right ſhall afterward be tryed in the Writ of right, the ſpiritual Judge is to give *e* ſentence.

c 7 Ed. 3. fol. 42. b. 8 Ed. 3. fol. 50. a. Regiſt. Orig. fol. 29. b. 38 Ed. 3. fol. 13 a. 16 Ed. 3. tit. Quare impedit. 147. 38 Hen. 6. fol. 20. a. Fitzh. N. B. fol. 30. c. Stingeman. fol. 108.

d 31 Hen. 6. fol. 14. b. & Bract. lib. 5. tract. de Exceptionibus cap. 4. fol. 403. a. & Vide Fitzh. Nat. Br. fol. 45. D.

e Weſtm. 2. cap. 5.

The

The ſame Statutes allow, to the ſpiritual Juriſdiction, coniſans of the fifth, and of all parts leſs than a fourth of the value of the Church in Tithes controverted 'twixt two Parſons: and no *Indicavit* *f* is grantable to forbid the ſuit of one of them, commenced for any leſs part, in reſpect of the Patrons right only. Neither upon them, by conſequence, hath any Writ of right of any part of Tithes that *g* appears not to be a fourth part of the Churches value, been allowable. But for this point; how the Law was before thoſe Statutes of 13 *Ed.* 1. is a great queſtion in our year books, and divers are the Opinions touching it. Some *h* think that before the Statute of *Weſt.2. cap.* 5. (out of which, joyned with *Circumſpectè agatis*, they limit the *Indicavit* to the fourth part) no Writ of right of Advowſon of any Tithes lay by the common Law. Others gheſs that before that time a Prohibition or *Indicavit* lay upon every ſuit in the ſpiritual Court *i* for Tithes, and that the Patron might have had his Writ of *k* right upon ſuch prohibition againſt the ſuit of his Encumbent, either of a fifth or ſixth part, and that theſe Statutes reſtrained him to the value of the fourth part at leaſt. Others have herein other fancies. But it is plain firſt, that long before thoſe Statutes, Tithes were demandable, of the owner detaining them, of their own nature, and pleadable, in the Spiritual Court: and that affirmed in *Fleta*, was regularly

f *Artic. Cleri, cap.* 2.

g 18 *Ed.* 2. *tit.* Brief 825. & *Regiſt. Orig. fol.* 29. *b.* Vide *Fitzh. Nat. Br.* 45. *D.*

h Moile 38 *Hen.* 6. 20. *a. Forteſc.* 31 *Hen.* 6. 14. *a. Stamford. fol.* 108. & Voyez 38 *Ed.* 3. 19. *a.* 16 *Ed.* 3. *tit.* Quare impedit 147.

i Markham 38 *Hen.* 6. *fol.* 20. *a.* & Parn. 4 *Ed.* 3. *fol.* 27 *b.*

k *Regiſt. Orig. fol.* 29. *b. Fitzh.* B. 30 *E. Forteſc.* 38 *Hen.* 6. *fol.* 20. *a.*

larly before true. *Decimæ* I *in quantùm Decimæ* (it ſuits againſt the Pariſhioners) *debent in foro Eccleſiaſtico intentari*, wherewith *Bracton*, * living in the time of *Henry* the third, alſo agrees. But it is as plain that before thoſe Statutes, if the Rectors of two Churches of ſeveral Avowries, had controverted the right of a fourth part (or more of the value of either of their Churches) in Tithes, by ſuit commenced in the ſpiritual Court, the Patron of the Rector-defendant might have had an *Indicavit*, to prohibit the proſecution and holding of the Plea. *Bracton* teaches us that; and hath the form of the Writ to the ſame purpoſe, and gives his reaſon, *Quia poſſet Patronus, jacturam ſuæ advocationis incurrere.* But ſomewhat doubtfully he limits the quantity of the Tithes to the ſixth part at the leaſt, beyond which denomination the *Indicavit*, he thinks, lay not for any part. His words are, *Si contentio fuerit inter Rectores de aliquibus Decimis quæ æſtimari poſſunt uſque ad quartam, quintam, vel ſextam partem advocationis, ultra quam partem non extenditur prohibitio ut videtur, tunc fiat Judicibus* (Eccleſiaſticis) *Prohibitio in hac forma. Rex talibus Judicibus ſalutem. Indicavit mihi &c.* But he mentions no Writ of right of Advowſon of Tithes that ſhould follow. He ſayes indeed that upon the *Indicavit*, by conſent only of the Patrons, there may be an inqueſt taken (the Jury being returned into Court by *Venire facias* or *Diſtringas*

1 *Fleta, lib. 6. cap. 37.*

* *Lib. 5. de Exceptionibus, cap. 4. fol. 403. & cap. 10. fol. 407.*

Diſtringas had by petition of them ſo conſenting) *tanquam de Advocatione*, to find *Utrum talis præſentatus à tali Patrono recentèr fuerit in ſeiſina de talibus Decimis tanquam ſpectantibus ad Eccleſiam ſuam quam tenet de præſentatione talis Patroni ſui, vel ſi talis alia perſona inde fuit in ſeiſina tali tempore ut de Decimis ſpectantibus ad Eccleſiam ſuam talem quam tenet de advocatione talis Patroni ſui.* But how ever *Bracton's* own opinion (yet doubtfully) be, that the *Indicavit* might be brought for the ſixth part, and for no leſs, yet, it ſeems, the practice of the age was otherwiſe: and that no determination was in his time, nor before 13 *Edv.* 1. of any certainty therein; which is expreſsly delivered in the Grievances comprehended in the National *m* Council of *London* in 21 *Hen.* 3. where all the Clergy entreated *Otho* the Popes Legat, that he would perſwade the King to alter and correct certain proceedings, *quæ fuerunt in regno Angliæ in præjudicium libertatis Eccleſiaſticæ*; among which, one is, *Item ne currat prohibitio* (you muſt underſtand the *Indicavit*) *Ne Judices Eccleſiaſtici cognoſcant de jure Patronatus quominus Clerici poſſunt petere Decimas tanquam de jure Commum ad Eccleſias ſuas pertinentes. Quia Patroni Eccleſiarum vel Capellarum quæ Decimas petitas poſſident, dicunt per talem petitionem Juri Patronatus ſui derogari, & nolunt Juſticiarii Domini Regis judicare quota*

m Annal. Burton. in Biblioth. V.C. Thomæ Allen. Oxon.

pars Decimarum peti poſſit vel debeat coram Judice Eccleſiaſtico. And another, *Item ne currat prohibitio Domini Regis, ne Rector Parochialis Eccleſiæ impetat eos qui percipiunt Decimas infra limites Parochiæ ſuæ.* By both which, compared with the ancient Books, it appears, that the Kings Prohibition lay commonly, if the Advowſon of the Tithes were between two perſons queſtioned, and that alſo (for ought occurres to the contrary, except *Bracton's* conjecture) if any part of the Tithes or the Advowſon (which in ſuch a ſuit were reputed as one) had been controverted. To theſe teſtimonies may be added this, in the Epiſtles of the moſt learned *n Robert Groſſeteſt* Biſhop of *Lincoln* under *Henry* the third, whereby the courſe of *Indicavit* is proved, and alſo taxed for injuſtice againſt the liberty of the Church. Thus is it ſpoken of among other grievances of the Clergy. "*Item* in Eccleſiæ "libertatem non mediocritèr delinquitur, cum "Judices Eccleſiaſtici, ne cauſas quas notum eſt "purè eſſe Eccleſiaſticas in foro diſcindant Ec- "cleſiaſtico, à domino Rege prohibentur. Ut "per literas Regias inhibetur ne Judex Eccleſi- "aſticus judicialitèr cognoſcat utrum Eccleſia "vel Capella talis loci ſit Capella Matricis Ec- "cleſiæ alicujus alterius loci, & utrum Decimæ "talis terræ ad hanc vel ad illam pertineant Ec- "cleſiam, eò quòd ſi Actor in hujuſmodi cauſi "evincat poſſeſſionem, Eccleſiæ Rei contingeret "immi-

n In Epiſt. Rob. Linc. MSS. in Biblioth. Cotton.

"imminui ac per conſequens, ut aiunt, jus Patro-
"natus ejuſdem Eccleſiæ deteriorari, Eccleſiâ
"ad quam Patronus præſentabat effectui minus
"pinguî. Accideret namque ratione conſimili,
"omnem cauſam ſuper poſſeſſionem vel quaſi
"poſſeſſionem Eccleſiaſticam inter duos Rectores
"duarum Eccleſiarum diverſorum Patronatu-
"um emergentem, ne ventilaretur coram judi-
"cibus Eccleſiaſticis à domino Rege debere
"prohiberi; eo quod Actore in hujuſmodi cauſa
"evincente, continget ſemper Eccleſiam Rei im-
"minui ac per hoc, ſecundum quod dicunt, Pa-
"tronatum ejuſdem deteriorari. Conſequetur
"autum & ſic quod hujuſmodi cauſæ Eccle-
"ſiaſticæ nunquam diſcindentur. A ſeculari
"enim judice diſcindi non poterunt, neque ab
"Eccleſiaſtico judice, obſtante Regiâ prohibi-
"tione. Fortè autem nec conſequitur quod in
"hujuſmodi caſu, evincente actore, imminue-
"tur Patronatus alterius Eccleſiæ. Non enim
"minus eſt Patronus qui minoris Eccleſiæ eſt
"Patronus, ſed nec minùs eſt pater qui minoris
"hominis eſt Pater. Patronatus enim ſeu jus
"Patronatus, non intenditur vel remittitur ex
"majoritate vel minoritate rei cujus eſt Patro-
"natus. Præterea ſed tubera & ea quæ contra
"naturam excreſcunt in carne hominis non au-
"gent ipſum hominem, & medicinalis abſciſſio
"innaturalium hujuſmodi excrementorum ip-
"ſum hominem non imminuit ſed potius pul-
"crificat

" crificat & ſanat. Ita injuſtè poſſeſſiones & " quaſi poſſeſſiones Eccleſias ipſas non augent " ſed deturpant, & earum abſciſſio per juſtum " judicium non eſt Eccleſiarum imminutio, ſed " potius pulcrificatio quædam & ſanatio; unde " & Patronatus ſeu jus Patronatus per hujuſ- " modi abſciſſionem nullo modo poteſt immi- " nui vel deteriorari, ſed multò ampliùs emen- " dari. I faithfully relate it, and cenſure not the Arguments. You may do that, Reader, while you ſmile at the *Magis* and *Minus* in it. But alſo, although the *Indicavit* prohibited the Spiritual Court, yet it ſeems the Temporal, before the Statute of *Weſtminſter* 2. and after the time of *Henry* the ſecond, or thereabouts, held no Plea of right of Advowſon of Tithes, except only upon Inqueſt taken by conſent of both Patrons: ſomething, as you ſee, might be tried in it. May we not conclude then, that the ſame Statute, in thoſe words, *Habeat Patronus Rectoris ſic impediti breve ad petendum Advocationem Decimarum petitarum*, was the firſt Author (at leaſt after the change about the time of *Henry* the ſecond) of the Writ of Right of Advowſon of Tithes? Which alſo is well juſtified by the pleading of the Abbot of *Selbies* caſe, within ſix years after the Statute, wherein the parties (according to the faſhion of argument in pleading of that time) agree, [o] *Quod breve de quarta parte Decimarum primo locum habere cœpit à tempore Statuti*

o Placit. de Banco Paſch. 19 Ed. 1. r. 1. 45.

tuti Regis nunc apud Weſtmonaſterium inde editi, &c. Neither reſts any ſcruple, touching the fourth part, why the Prohibition in the *Indicavit* and the Writ of Right, ſhould be of the fourth part only, or of a greater, although the Statute of *Weſtminſter* 2. ſpeak of no certain part. For, that of *Circumſpectè agatis* ordains, That no Prohibition or *Indicavit* ſhould lye, where the part controverted is leſs than a fourth (it being before grantable upon ſuch ſuit for a ſixth part, by *Bracton*'s opinion; and it ſeems indeed, upon ſuit for any part) and the Statute of *Weſtminſter* the 2. gives the Writ of Right only where the *Indicavit* is firſt ſued. And for this matter of *Indicavit* (which concerns properly ſuit between Rector and Rector, not between the Rector and the Pariſhioner) take as a note by the way the advice of the Biſhops among themſelves in 41 *Hen.* 3. againſt the Temporal Courts. In the Annals of *Burton* it is extant, and thus ſpeaks. *Concilium Archiepiſcopi & omnium Epiſcoporum ſuper Articulis propoſitis apud* London. *Petit perſona Eccleſiaſtica Decimas coram Judice Eccleſiaſtico. Judicanti & petenti porrigitur Regia Prohibitio nomine Patroni Eccleſiæ cujus Rector convenitur, ne ſuper Advocatione ſeu Patronatu Eccleſiæ Judex ille cognoſcat; ſi actor proſequatur & Judicantis officium * aſſumat, uterque attachiatur & attachiati veniunt. Conſilium tale eſt, quod ſi Juſticiarii cauſam Decimarum ſub colore querelæ*

* ſ. judex.

Advocationis Eccleſiarum ad ſe trahere velint & de non proſequendo ulterius cauſam Decimarum in foro Eccleſiaſtico & Judice ſive a Parte ſecuritatem exigunt, in nullo eis caveatur. Et ſi propter hoc ariſtentur, per loci Dioceſanum requirantur ſive per Epiſcopum proprium. Et ſi libere non tradantur Eccleſiæ, competenti monitione præmiſſa excommunicentur Judicantes & detentores. Et ſi quæratur à Judice quota pars vel quanta petatur, non reſpondeatur. But this advice of theirs was to little purpoſe, nor durſt they, queſtionleſs, have put it in execution. The Statutes of *Weſtminſter* the 2. and *Circumſpectè agatis* gave them ſome remedy; whereof enough already.

IV. Of Writs of *Scire facias*, granted to call men to anſwer in the Chancery for Tithes, ſufficient teſtimony is in the Statute made for the Clergy in 18 *Ed.* 3. *chap.* 7. *Item que per la ou briefs* (ſo are the words) *de* Scire facias *eient eſte grantez a garnir Prelates, Religieuſes, & autres Clerks a reſpondre des Diſmes en noſtre Chancellarie & a monſtre s'ils eient riens pur eux ou ſachent riens dire pur quoy tielx Diſmes a les demandants ne devient eſtre reſtituees & a reſponder auxibien a nous come a la partie de tielx Diſmes &c.* By this it appears, that ſome uſe was to grant ſuch Writs for Tithes. Whence alſo *Fitzherbert* well inferrs, that the right of Tithes was determinable in the Kings Court. But we have not in our Year-Books any caſe of

of further declaration of that uſe before the Statute. But out of good ground you may conjecture, that in theſe Three ſpecial caſes, Writs of *Scire facias* were grantable anciently for Tithes, and that in thoſe times, before the Statute; either upon the title of the demandant, firſt found by *Inqueſt*, to the Tithes, or return'd by the Sheriff; or out of *Fines*, it ſeems, levied of Tithes; or upon *Patents* of Tithes legally granted by the King, when, againſt the Grant, any Clergy-man by the Canon Law took them from the Patentee. Of all theſe, there is fair proof enough. But the third (it ſeems) hath principal reference to that Statute, as ſhall anon be ſhewed. For the courſe of taking an *Inqueſt* by commiſſion, which being return'd, might be ſufficient ground for a *Scire facias*, it appears in *Eſchaet.* 8 *Ed.* 1. *numer.* 67. that a commiſſion was ſent to *Adam* of *Everingham*, Steward of the Foreſt of *Shirewood*, to enquire by Oath of the Foreſters and Verderors, whether the Priors of *Lenton* had uſed to have all Tithes of the Kings Veniſon, taken in the County of *Nottingham*, which they claimed *per Cartas quorundam prædeceſſorum*, *&c.* And in the Inquiſition returned, it is found, that they had uſed to have it, and that firſt by the Grant of *p* King *John*. And in the ſame bundel, *num.* 72. a Commiſſion is to *Nicholas* of *Stapleton*, commanding him to enquire, whether the Prior of *Wyrkeſep* ought to have the Tithes of all profits

p Videſis *Rot. Claſ.* 21 *Hen.* 3. *membran.* 3.

fits of the Mannor of *Gringeley*; *Nobis ſuper jure Prioris in hac parte & facto contrario* (that is, the ſubtraction of them by *Henry* de *Alemannia*, againſt whom the Prior complain'd) *certiorari volentibus, &c.* Whereupon the Commiſſioner returns, that the Priory had right by preſcription, and that *Henry* de *Alemannia* had ſubtracted them. What could be more proper, than to have a *Scire facias* upon the Inquiſition, according to the intent of that preamble of 18 *Ed.* 3. in which *Scire facias*, the right might be tried between the parties, and ſo judgement be given? To theſe may be added that in *Inquiſ. ad quod damnum* 8 *Ed.* 2. *num.* 79. Where, *per Petitionem* q *in Conſilio*, the Abbeſs of *Godeſtow* had a Writ directed *Cuſtodi equitii ſui de VVoodſtock, &c.* which relates that *ex parte dilectæ nobis in Chriſto Abbatiſſæ de* Godeſtow *per petitionem ſuam coram nobis in Conſilio noſtro exhibitam, nobis eſt oſtenſum quòd cum per cartas progenitorum noſtrorum quorundam Regum Angliæ conceſſum ſit ei, quod ipſam Decimam omnem in Manerio noſtro de* Wodeſtoke, *& parco noſtro ibidem per annum renovantium percipiat & habeat, prætextu cujus*, the Abbeſs and her Predeceſſors had enjoyed it, and that the Bailiff kept from her the Tithe of the Colts, bred in the ſame Park; wherefore it commands him to reſtore them if they be ſo due; which ſuppoſes, I think, that he ſhould return an inqueſt or ſome diſcovery of the truth

q Videſis Rot. Parl. 8 Ed. 2. rot. 23.

r Vide, ſi placet, Rot. Clauſ. 21 Hen. 3. membr. 19.

OF

or falſhood of the Plaintiffs pretence, although indeed this example may ſerve alſo for that part of our diviſion of this kind of proceeding which touches *Patents*. But to that Writ is annext the return, that is, the Bailiffs acknowledgement in *French* of her right: his name is *William Beauxamys*. So in *Eſcaet.* 7. *Ed.* 3. *num.* 83. a Commiſſion is ſent out to enquire of the right of the Tithes of the Demeſnes of the Kings Caſtle of *Tikhull*, which the Prior of S. *Oſwald* claimed: the enqueſt was taken of it at *Le Faure Okes*, in the confines of *Yorkſhire* and *Nottingham*: and in it the particulars of the right are returned: and what ſhould want, that upon ſuch returns, writs of *Scire facias* might not have been granted? we omit that before cited out of the Parliament Rolls of 18 *Ed.* 1. And light alſo to this practice in the temporal Courts of that elder time, may be had from other ſ Commiſſions or Proceſs in the Rolls; as from that ſent by *Henry* the third into *Ireland*, to the Archbiſhop of *Caſſile*, the Biſhop of *Ferne*, and the Biſhop of *Liſmore*, commanding them, that, taking with them *Jeffrey* de *Mariſco* then Juſtice (or Lord Deputy) of *Ireland*, or ſome other whom he ſhould appoint, they ſhould enquire by the Oaths of both Lay and Clergy-men, whether *Bartholomew* de *Camera* Parſon of the Chapel of *Limeric*, or *William* of *Caerdiff* Treaſurer there, had ſeiſin of the Tithes, *De Piſcaria & Molendinis de* Limeric,

ſ Pat. 9 Hen. 3. par. 2. mem. 3.

tempore Johannis *Regis Patris noſtri ante guerram motam inter ipſum & Barones, &c.* But it may be alſo that theſe Enqueſts or Returns made of the Title to Tithes by the Sheriff, were only in caſe where the Tithes increaſed out of the Kings Demeſnes, or perhaps immediate Tenancies. The examples ſeem not to go further: and in *t 6 Ed.* 1. a Petition was exhibited in Parliament by one *Piers* a Chaplain of the Earl of *Savoy*, againſt the Prior and Covent of *Lewes*, for a Tithe given him by the Prior and Covent in the Pariſh of *Weſtun*, in the Dioceſe of *Ely*, whereof another grant had been afterward made by them to one *Richard* de *Menton*; and *Piers* beſeeches the King to ſend his writ to the Sheriff of *Cambridge*, to put him in poſſeſſion; but this anſwer is indorſed. *Rex non intromittit ſe de hiis quæ talitèr ſpectant ad forum Eccleſiaſticum; ſed proſequatur Jus ſuum verſus Clericum qui tenet Eccleſiam, coram Ordinario.* Here was an expreſs excluſion of the Temporal juriſdiction in ſuch a caſe, where an original Writ or Commiſſion was demanded to ſettle or inquire of the right of Tithes, that toucht only common perſons. But whenever through ſuch means the title appeared upon record, I underſtand not why a *Scire facias* might not aſwell be iſſuable (although I have not met with an expreſs example of that kind) as in the laſt courſe that is upon the title appearing in Patents of the King or his Anceſtors.

t *Inſcit. Pat. 6 Ed. 1. in Arc. Londin.*

V. For

V. For that ſecond ground of Writs of *Scire facias*, which we ſuppoſe to be *Fines*, levied of Tithes, why was it not as likely that upon ſuch Fines levied, Writs of *Scire facias* ſhould lie, as upon any others of Lands or Rents? And that Fines of the right of Tithes were in the Kings Courts anciently levied, is manifeſt: not as I remember upon Writs of *Covenant*, which yet may (for ought I know) at this day be brought, in the temporal Court, for ſpiritual [u] Tithes, in regard no Tithes by damages are only to be recovered; but chiefly in Writs of *Right of Advowſon*. For example, in *Fin. Trinit.* 10. *R. Johannis Wilt. apud* Windleſore *coram ipſo Rege*, Simone *de* Pateſhulle, Jacobo *de* Poterna, Henrico *de* Audemero *Juſticiariis & aliis Domini Regis fidelibus tunc ibidem præſentibus*: upon a Writ of right of Advowſon brought by *Aſcelina* Abbeſs of *Wilton*, againſt *Henry* of *Abeny* for the Patronage of the Chapel of the greater *Wicheford*, the concord is, that the Abbeſs grants it to him in Fee, ſaving a penſion of two ſhillings yearly to the Church of *Newton*, being a Prebend of *Wilton*. "Et pro hac recognitio-"ne & quieta clamatione & fine & concordia "idem *Henricus* remiſit & quietum clamavit de "ſe, & hæredibus ſuis prædictæ Abbatiſſæ & "Eccleſiæ ſanctæ *Edithæ* Virginis in *Wilton*, & "ejuſdem loci conventui, *all his right in certain* "*Lands*, & recognovit & conceſſit omnes De-"cimas

[u] 33 *Ed.* 1. *fol.* 8. & *Regiſt. Orig. fol.* 165.

"cimas de Dominico ſuo in majori *Wicheford*, "eſſe pertinentes ad prædictam Eccleſiam de "*Neweton*, quæ eſt Præbenda de *VVilton* ſicut "eas habere ſolet, excepta Decima bladi pro- "veniente ex viginti acris terræ quas perſona "prædictæ Capellæ elegerit de Dominico ipſi- "us *Henrici*: quam Decimam perſona per *Hen-* "*ricum* prædictum, vel hæredes ſuos ad prædi- "ctam Capellam de *VVicheford* præſentata, & "admiſſa per viſum perſonæ quæ prædictam "Præbendam de *Niweton* habuit, vel per viſum "ballivi ejus debet recipere in autumno, ſicut "ab antiquo recipere conſuevit. The record is worthy of ſpecial obſervation. And in the Leiger book of the Priory of *Merton* in *Surrey*, a Fine is of *Paſch.* 12. *R. Joh.* before the King and the ſame Juſtices, between *VVilliam* de *Cantelupo* Defendant, and *VValter* Prior of *Merton*, upon the right of Advowſon of the Church of *Eyton*, wherein it is agreed that the Chaplain of the demandants in *Eyton*, ſhall not take *à parochianis ejuſdem Eccleſiæ nec in Decimis, nec in Oblationibus, nec in Confeſſionibus, &c.* but leave them all to the Pariſh Church of *Eyton*: and in this we may, as in the other, note the pretended intereſt of the Patron, in diſpoſition of any of the Revenues of the Church; which anciently claimed, while Inveſtitures continued, was not as yet omitted in theſe Legal proceedings or inſtruments, that is, Fines; which are of greateſt curioſity.

ſity: and according hereto is a Fine of 7 *Rich.* 1. levied between the Prior of *Stanes* and *Alice Hopton*, of the Advowſon of the Church of *Chekleigh* in *Staffordſhire*, where *Alice* as Patroneſs grants to the Priory, among other things, *Omnes Decimas villæ de* Northmankote *in perpetuum quæ eſt de eadem Parochia*, that is of *Cheklegh*. And in the [a] Chartulary of *Gisburn*, in a Fine of 23 *Hen.* 3. between *Peeter* de *Bruis* Plaintiff, and *John* Prior of *Gisburn* (in the Province of *York*) defendant, *In droit a' Avowſon, Peeter* grants *et jus ſuum omnes Decimas ſuperſcriptas quas, &c.* The like alſo doth he in a Fine of 26 *Hen.* 3. there tranſcribed: and in 30 *Hen.* 3. alſo, of which more particular mention is before made.

[a] *In Bibl. Cot.*

VI. But for Writs of *Scire facias* brought upon the third ground, that is, in Caſe where the title appears upon record in Patents made of the Tithes from the King or his Predeceſſors; take this ſpecial example of 17 *Ed.* 3. A Writ was directed to the Sheriff [b] of *Eſſex*, relating that *Maude, Quondam Regina Angliæ*, granted to the Dean and Canons of the Kings free-Chapel of *S. Martins* in *London*, the Churches of *Wittcham* and *Cherſinges*, *Cum Capellis & Decimis, &c.* and that they were thereof and of the Tithes of *Wittcham* and *Chereſinges*, ſeiſed till 16 *Ed.* 2. and that ſince the Abbot of Saint *Johns* of *Colcheſter* took from them two parts of the Tithes, &c. "Et quia nos omnia & ſingula

[b] *Eſpicul. Brev. de* 17 *Ed.* 3 *part.* 1. & 3. in Arce Londin.

"jura liberæ Capellæ noſtræ ſupradictæ manu-
"tenere volumus & tenemur, & ea quæ ſubſtra-
"cta fuerint ſive injuſtè occupata revocare, tibi
"præcipimus quod ſcire facias nunc Abbati
"quod ſit in Cancellaria noſtra in quindenam
"S. Johannis Baptiſtæ prox. futurum ubicunq;
"tunc fuerit ad reſpondendum tam nobis quam
"præfatis Decano & Capitulo de uſurpationi-
"bus, occupatione, & detentione dictarum dua-
"rum partium decimarum prædictarum & ad
"oſtendendum ſi quid pro ſe habeat vel dicere
"ſciat quare dictæ duæ partes Decimarum ea-
"rundem eiſdem Decano & Capitulo adjudi-
"cari non debeant, & ad faciendum & ad reci-
"piendum ulteriùs quod curia noſtra conſide-
"raverit, &c. teſte, &c. apud Weſtmonaſt. 17.
"Junii anno regni noſtri 17. Per Regem & Con-
"ſilium. This Writ was return'd with *Scire fe-
ci* by *H. Garnet* Sheriff of *Eſſex*, and by conſent
of the parties it is referr'd to *Michælmas* Term
following *In Statu pro nunc*: the Writ is both
in part 1. and 3. of that year, but to that in part
3. which is of *Trinity* Term, a Plea of the Ab-
bots is annext in theſe words. "Et prædictus
"Abbas per atturnatum ſuum dicit quod præ-
"dicti Decanus & Capitulum per breve ſuum
"non ſupponunt quod Eccleſiæ de *Vittcham*
"& *Cheresinges* ſunt de fundatione dictæ liberæ
"Capellæ Domini Regis, ſed quod illas Eccle-
"ſias tenent de dono *Matildæ* quondam Regi-
"næ

"næ Angliæ poſt fundationem dictæ liberæ Ca-
"pellæ, & dicit quod tempore doni, prædi-
"ctæ Eccleſiæ fuerint in juriſdictione ordina-
"rii, videlicet Epiſcopi *London.* & continuè
"poſt donum hucuſque fuerint & adhuc ſunt in
"præſenti in juriſdictione ordinaria. Et dicit
"quod prædictæ Eccleſiæ fuerunt viſitabiles &
"viſitatæ per Epiſcopos *London.* in viſitationi-
"bus ſuis a tempore à quo memoria non extat:
"& prædicti Decanus & Capitulum per breve
"ſuum petunt decimas quas ſupponunt eſſe par-
"cellam earum Eccleſiarum quæ ſunt in juriſ-
"dictione Ordinaria in forma prædicta, & ſic
"Decimæ illæ ſunt merè ſpiritualia & non pla-
"citabilia niſi in curia Chriſtianitatis; per quod
"non intendit quod Curia iſta in hoc caſu cog-
"nitionem habere debeat. Here it appears, that the Counſel of the Abbot of *Colcheſter* Defendant, ſuppoſed that the coniſans of the Tithes was ſpiritual only, unleſs they were originally part of the Kings free Chapel: how the Caſe was determined, appears not. But in the next Parliament following was a Petition exhibited by the Clergy in thoſe words before cited §. IV. complaining of the granting ſuch Writs of *Scire facias*, and upon that Petition the King anſwered, *Que tielx briefs deſore navant n ſoient grantes, & que les Proces pendant ſur tielx briefs ſoient anntes & que les parties ſoient diſmiſſes devant ſecular Judges de tielx maner de Pleas ſalve*

a nous noſtre droit tiel come nous & noſtre anceſtors avoient eve & ſoloient aver de reſon. I think we need not doubt but that this very Caſe of the Abbot of *Colcheſter* was no ſmall cauſe of that Petition of the Clergy: and you ſee mention is, in the anſwer, of ſome Writs hanging, whereof this is moſt likely to have been one. But however the Petition was anſwered, and although out of this Petition and anſwer that Act of 18 *Ed.* 3. hath been receiv'd among our Statutes, and commonly goes for one, yet might it deſerve further conſideration than I will here ſeem to take of it: only I admoniſh that within four years after, a *Scire facias* was *b* brought by a Patentee of Tithes in the Foreſt of *Inglewood*, and that againſt a Prior being Pernor of them; and by judgement the Writ was allow'd without mention or the leaſt regard had of that Act: why that was ſo, or what force the Act hath, let others examine; I purpoſely abſtain.

b 22 *Aſſiſ. pl.* 75.

VII. But for Proceſs of bare command of payment of Tithes, or the like; when the title was by Patent clearly ſuppoſed true, the Sheriff or other Officer was ſometimes commanded by Writ to take order that the demandant might enjoy his Tithes. As in *Clauſ.* 7. *Hen.* 3. *part.* 1. *membran.* 6. the King directs his Writ to *Brian* de *Inſula* Keeper of the Foreſt of *Shirewood*, telling him, that *pro ſalute animæ Domini* Joannis *Regis patris noſtri conceſſimus Monachis*

nachis de Baſingwerc, *quod percipiant hac vice uſque ad feſtum* S. Michaelis *Anno regni noſtri* VII. *Decimas de bladis ſeminatis in defenſo noſtro inter* Blakebroc *&* Gloſſop, *& ideo vobis mandamus quod ipſos Monachos hac vice ſine impedimento permittatis Decimas prædictas percipere. T. &c.* And ſuch more ſometimes occur. But this, and the moſt of that age that are of this matter, indeed appear to have been of Tithes in a Foreſt alſo, as that of 22 *Ed.* 3. is in the Book of *Aſſiſes* (which happened after the Statute of 18 *Ed.* 3.) and you may remember thoſe before cited out of 6 *Ed.* 1. and 18 *Ed.* 1. in Chapter XI. §. III. and the example of 8 *Ed.* 2. before remember'd touching *Woodſtock* Park. So in *Rot. Clauſ.* 5 *Hen.* 3. *part.* 2. *membr.* 14. the Biſhop of *Salisbury* hath his fifty ſhillings yearly *nomine Decimæ*, out of *New-Foreſt* (which *c Henry* the ſecond had granted to his Church by the name of *omnes Decimas de Nova Foreſta, &c.*) and other like out of other, paid him by Writ to the Sheriff; and in *Rot. Pat.* 11 *Hen.* 3. *membrana* 5. *part.* 1. *Euſtace* Biſhop of *London* hath the Tithe of the Kings Veniſon, taken in the Foreſt of *Eſſex*, (according to King *d John's* Grant) by Writ directed to the Foreſters and Bailiffs of that County. Neither would they (it ſeems) in that age permit any ſuit for the Tenths of Veniſon or Beaſts of the Foreſt in the Spiritual Court,

c *Cart. Antiq. CC. in dorſ.* 10. in Arce Lond.

d *Rot. chart.* 6. *R. John. membr.* 12. *ch.* 107.

(although those Tenths were most commonly settled in one Church or another by Grant) as may be seen in *e Mich.* 9 & 10 *Hen.* 3. *Rot.* 15. where *John Fiz-Robert*, in an Attachment upon a Prohibition against *Philip* of *Ardern* Clerk, in the pleading allows, that for Tithe of Hay and Mills, the prosecution in the Spiritual Court was lawful; but he further says, that *de Decima Bestia Foreste eum implacitavit contra prohibitionem, &c.* And herewith may be considered also the Kings *f* command, sent to the Constable of *Windsore* Castle, that the Church of Saint *John* in *Windsore* should have *Decimas Gardini Regis de Windlesshores.* But out of these all (as out of the examples before brought of Commissions to be returned) it may perhaps be collected, that only the Tithes of the Kings lands, or belonging to his Churches, were to be ordered or commanded to be paid by these kind of Processes. I confess I have not seen enough to perswade me otherwise, for the time after about King *John* or his near predecessors. Yet, that as I leave the judgement of all, which historically I relate to the able Reader, so I may not defraud him of what in any kind may give light; here I offer him also this Writ of 24 *Hen.* 3. that seems to touch the temporal Courts determination of the right of such Tithes, as, for ought appears, belonged neither to the Kings Churches, nor were encreasing

e in Arct Land.

f Pat. 16 Hen. 3. m. 6. 7.

ſing in his Demeſnes or immediate Tenancies. *Henricus Dei gratia Rex Angliæ & Vicecomiti* Hertford *ſalutem. Licet aliàs tibi ſignificaverimus quòd non permitteres Eccleſiam de* Hamelamſtede *ſpoliari Decimis ad ipſam pertinentibus, & quod Eccleſiam ipſam manuteneres & defenderes in eo ſtatu in quo fuit tempore* Sylvii *quondam Rectoris ejuſdem Eccleſiæ, non tamen fuit intentionis noſtræ quòd occaſione illius præcepti aliqua alia Eccleſia Decimis ſuis ſpoliaretur. Et ideo præcipimus quod occaſione illius præcepti nullam violentiam inferas vel inferri permittas Monachis S.* Albani *ſuper Decimis ſpectantibus ad Eccleſiam ſuam de* Redburne *quas per* XX. *annos hactenus pacifice poſſederunt. T. meipſo apud Weſtm.* 1. *die Septembris an. r. n.* XXIV. And in like form was a Writ ſent to the Conſtable of *Berkhamſtede*. But this kind of Proceſs, and all other ſuch Writs of *Scire facias*, either upon Commiſſions returned, Fines, or Patents, or otherwiſe, (for ought I could yet learn) have long ſince ceaſed, by reaſon eſpecially of that received Act of 18 *Ed.* 3. Neither ſince that one caſe of 22 *Ed.* 3. as I gueſs, hath any uſe been of an original ſuit for Tithes in the Temporal Courts, ſaving only upon Prohibitions and the Statutes of 32 *Hen.* 8. *&* 2 *Ed.* 6. I ſay, original ſuit: for otherwiſe, the queſtion of the right of Tithes, incident in an Iſſue at the Kings ſuit, hath ſince been triable in the Temporal Court; and be-

* *In Codice Abbat. S. Albani. Ms.*

g 38. *Aſſi. pl.* 20.

h Vide 50 Ed. 3. fol. 20. & 22 Ed. 4. fol. 2. 4.

between *h* common perſons alſo; eſpecially if the right of Tithes, upon the Iſſue, were but indirectly or incluſively in queſtion. And although it were directly the very Iſſue; yet alſo it hath ſometimes been tried in an Action of Treſpaſs in the Kings Bench, as you may ſee in *Mich.* 12 *Ed.* 2. *Rot.* 66. between *Philip* de *Say* Parſon *of Hodenet* in *Shropſhire*, and *Geffrey* of *Wolfele* Parſon of *Chedleton*, for Tithes in *Marchumle*. But of theſe things hitherto; and enough.

The end of the Hiſtory of Tithes.

A REVIEW.

AFter ſome few Copies, thus half printed and half written, were diſperſed, and ſince the various Cenſure of unequal Readers, (ſome of them cavilling at ſuch Paſſages in it, as the Author at firſt thought, and not without cauſe, had been enough cleared) this ſhort Review *is now added; wherein, beſide ſome other Confirming and Declaring* Authorities, *by the way alſo, and opportunely enough, occur ſome* Admonitions *briefly offered, that may ſomewhat direct in the* Uſe *of this* Hiſtorical Truth. *The printed ſheets could not be encreaſed, or altered; neither was it ſo fit, after many hands had the whole, that Additions inſerted, ſhould make any variance from the written part. And plainly, that of the* Admonitions, *for direction in the* Uſe, *of its own nature rather required a ſeveral place, than was fit to have been mixt in the Body of the* Hiſtory. *In the name therefore of* Goodneſs *and* Learning, *I earneſtly beſeech every one, that hereafter ſhall get it either Copied or Printed, to joyn alſo (if he may) this* Review *with it.*

Of the I. Chapter.

IN the I. Sect. touching that of *Abraham*'s Tythes being of the ſpoils of War only, I know many think otherwiſe: And beſide the general name of *Tythes of all*. Reaſons are drawn for their ſide out of theſe words of the Patriarch to the King of *Sodom*; *I will not take of all that is thine ſo much as a thred, &c.* I neither profeſs to

dispute it, nor find I any such consequent out of that Text. And the [1] answer to the objection is not difficult. But I add here to those testimonies both of *Jews* and ancient Fathers which I have cited, (for I was willing to make their testimonies my warrant, not to gloss the Text with my own interpretation, or with the fancies of petty names) that S. *Ambrose* and *Eucherius*, Bishop of *Lyons*, call those Tythes also [2] *Decimas prædæ & victoriæ*. And in one passage, *Eucherius* having a plain regard to the words of the Epistle to the *Ebrews*, which in the vulgar are exprest by *Decimas de præcipuis* (for the Greek δεκάτην ἐκ τῶν ἀκροθινίων) says *de præcipuis prædis* Abraham *Patriarcha Decimas legitur obtulisse*, directing himself still in the conceit of the word *All* in *Genesis*, according to that ἀκροθίνια in the holy Epistle, which both in Translations enough, and in the *Greek* [3] Proverb before remember'd, denotes spoils of War. Yet also the same Father soon after calls them *Decimas omnis substantiæ suæ* generally; but plainly shewing in his former words, that he took *omnis substantiæ* here for nothing but *victoriæ prædam*. Which, it seems, *Philo* the *Jew* also understands, where in his Anagogical course of contemplation he says, that *Abraham* being the tenth degree from *Sem*, [4] τῆς Θεῷ τὰς Δεκάτας χαριστήρια τῆς Νίκης ἀνατίθησι, that is, *consecrated Tenths to the Almighty, as a thanksgiving for his victory*. And *Primasius*, an old *African* Bishop, interprets *de præcipuis* in the *Latin* Text by *de melioribus spoliis*. But some have cavilled at my relating, according to S. *Hierome*, that were it not for the holy authority of the Epistle to the *Ebrews*, it might stand indifferent whether *Abraham* gave Tythes of the spoils to *Melchisedek* as to a Priest, or *Melchisedek* the tenth of his Estate to *Abraham*, as a portion to one of his posterity. If there be a fault in that assertion (I confess I find none) let them be so bold then as to tax those learned Fathers for it, S. *Hierome* and [5] *Eucherius*, beside *Freculphus* [6] Bishop of *Lisieux*, and other ancient Writers, that in the same syllables affirm it with S. *Hierome*, from whom indeed *Eucherius* transcribed the best part of his more notable passages. Somewhat may be here fitly remembred concerning two Adjuncts that belong to the Story of *Abraham*'s Tything, that is, who *Melchisedek* was; and where the place of his Kingdom, or *Salem*, was. For the first, such of the Fathers [7] as out of the *Ebrew* Text had the true notes of supputation of time, take him to be *Sem*, according as the opinion also was generally received among the old [8] *Samaritan Ebrews*, and divers *Jews* [9] also, especially of latter ages: howsoever some *Jews* have been long since of another opinion, in their idle and rash fancies, supposing him to be a Bastard, which they took to be the cause why his Descent is not spoken of with his name: others of them, with the *Hieracits*, making him [10] more than a man. But also both the *Hierosolymitan Targum*, and that other call'd *Ben-Uziels*, expresly tell us,

[1] Vide *Fran. Junium in Anal. Gen. c.* 14

[2] Consulas *Eucherium Lugd. in Gen. l.* 2. *c.* 17. & 18 & *D. Ambr. in Epist. ad Ebræos, cap.* 7.

[3] Ad cujus interpretationem etiam consule, si placet, *Eustathium ad Odyss.* T.

[4] *In lib.* περὶ τῆς εἰς τὰ προπαιδεύματα συνόδου.

[5] *L.* 2. *in Gen. cap* 25. & 27.

[6] *Tom.* 1. *hist. lib.* 1. *cap* 42.

[7] *Hieronym. tom.* 4. *in Ep. ad Evagr.* & *Eucher. loco citato*, &c.

[8] *Epiphanius in hæres.* 55.

[9] Autor τοῦ *Midras hugadah apud Rab. Iarchi in Gen.* 14. & *alij ibid.* item *Midras in Ps.* 76. *apud Galatin. de Arcanis l.* 3. *c.* 9. quem & vide *lib.* 10. *cap.* 6.

[10] *D. Ambr. l.* 3. *de fide c.* 5. *Hieronym.* & *Epiphan.* ubi supr. & *hæres.* 67.

us, he was *Sem* the Son of *Noah*; which some of late time also have in Works purposely written to that end, laboured to make manifest. And doubtless, at the time of the Victory, *Sem* was the chiefest of the family there, and either a first-born also, or else had in him the right of a first-born, or Priesthood, by translation from his elder brother; which I add, because the [1] *Rabbins*, and divers other of the learned will have it, that *Japhet* was the elder Brother. But how stands that so well with *Melchisedeks* being *Sem*, if according to that old tradition, both among Rabbins and Christians, the Priesthood were an incident to the first-born male? unless the right of Primogeniture were transferred from *Japhet* to *Sem* in *Noahs* [2] blessing as it was to *Jacob* from *Esau*, and from *Cain*, it seems, to [3] *Abel*, which must be thought on also in the taking their side, who suppose *Abraham* not to be the eldest of *Terahs* sons. For regularly the Ancients give the Priesthood before the Law to the first-born. And whereas *Moses* is said to have [4] sent young men that offered burnt-offerings, the *Chaldee* Paraphrases have for אח-נערי *eth-nairi*, *i.* young men, יח-בוכרי *iath-becri*, *i.* of the first-born; these S. *Chrysostom* [6] elegantly stiles, ἱερεῦς αὐτοχειροτόνητοι, that is, *Priests of themselves*, or *made without other Ordination* or *Suffrages*: to which Office also (thus had either by birth, or blessing, that equalled the birth) a kind of [7] Imperial and Patriarchick Dignity was annexed. That precedence of Birth given to *Japhet*, is of no late invention, but many hundred years ancienter than the *Talmud*, or any work extant of any Rabbin. For the Septuagint expressly [8] affirm it, καὶ τῷ Σὴμ ἐγεννήθη καὶ αὐτῷ πάτερ πάντων τῶν υἱῶν Ἕβερ ἀδελφῷ τοῦ Ἰάφεθ τοῦ μείζονος, that is, *and sons were born to* Sem, *being father of all the sons of* Eber, *and brother of* Japhet, *being the elder*, which in the *Ebrew* is not so plain on either side; for the words being אחי יפת הגדל *achi Japhet hagadol*, by reason of the want of terminations of cases, may be alone as well turned *elder brother of* Japhet, as *brother of* Japhet *being the elder*, which in the last *English* translation is brought nearest to the Original, thus: *Unto* Shem, *&c. the brother of* Japhet *the elder, even to him were children born.* And beside such interpretation of the Context, the Chronological part of the holy Story affords much to prove, that *Sem* was not the first-born in time. For Noah *was* [9] D. *years old, and got* Sem, Ham, *and* Japhet. Sem [10] *two years after the Flood, being C. years old, got* Arphaxad, that is, (as is most probable, if not plain) in the DC. II. year of [11] *Noah*, *Sems* age was only C. years: Then at *Sems* birth, *Noah* was D. II. years old. Who ever therefore was born when he was but D. years of age, must be C. II. years old, when *Sem* had seen only one C. years. If any of them were born in *Noah's* D. year (as the Text seems to teach) it must then be one of the other two, and not *Sem*. This argument, used by the *Jews* and others, which follow them here, joyn'd with what is in

[1] Eam esse *Rabbinorum* sententiam notat *D. Kim. ch. in rad.* גדל, *ita & Iarchi ad Gen.* 10. 21.

[2] *Gen. cap.* 9. *com.* 26. & 27.

[3] Vide *Philonem* περὶ ὧν ἱεραργοῦσιν Ἀβέλ τε καὶ Καίν.

[4] *Exod. c.* 24. *comm.* 5. & *vide Numer. c.* 3. *comm.* 12.

[6] *In Gen.* λογ. λε. videsis *Eucherium in Gen. lib.* 2. *c.* 25. & 27.

[7] *Isid. Pelusiota, l.* 2. *Ep.* 47.

[8] *Gen.* 10. 21.

[9] *Gen.* 5. 32.

[10] *Ibid.* 11. 10.

[11] Vide *ibid. c.* 7. 6.

the *Septuagint* for *Japhet*, makes so much against *Sem*'s being the first born, that however the great *Joseph Scaliger* be [1] most confident, that he was first in birth, as his name is expreſt in enumeration, and gives his Anſwers to the Chronology objected againſt it; yet you may with more probability take the more common and ancient opinion, that makes *Japhet* the elder; ſome will have *Ham*: But I leave that matter, ſuppoſing clearly that *Sem* being *Melchiſedek* (for, that one man ſhould be denoted by ſeveral names, is no novelty in Scripture) was either the firſt-born, or had the right of it transferr'd into him by ſpecial bleſſing, and ſo was ὁ μέγας ἀρχιερεὺς τοῦ Μεγίστου Θεοῦ, as *Philo* [2] calls him, that is, *the great High-Prieſt of the greateſt God*. For the place of his Kingdom, *Salem*, it is taken by [3] S. *Hieram* (as he learned from ſome *Jews*) and from him by [4] S. *Ambroſe*, *Euchenius*, *Primaſius*, and others, that this *Salem* is that which ſeated on this ſide of *Jordan*, is ſome LXXX. miles diſtant from the plain of *Mamre* where *Abraham* lived, and retains its name in the Story [5] of *John*'s Baptiſm, and they ſay that the Relicks of *Melchiſedek*'s Palace were there to be then ſeen. But the more common opinion of Chriſtians in S. *Hierom*'s time, was as now alſo of greateſt Divines, that *Salem* here and *Jeruſalem* were the ſame. *Salem noſtri omnes*, ſaith he, and others of that age that follow him, *urbis autem eſſe Jeruſalem*; but himſelf was not of that mind, having, as he ſaith, learned the contrary: But alſo with thoſe old Chriſtians *Joſephus*, and ſome later [6] *Jews*, expreſly agree; and a good character of the truth of their opinion is in the holy Text. For, there the *Kings Dale*, whence the King of *Sodom* came out to meet *Abraham* in his return is [7] remembred as if it were cloſe by where *Melchiſedek* was. Now it is thought certainly that the place of *Abſalons* Pillar, that is, the *Kings Dale* ſpoken of in [8] *Samuel*, is no other than a Valley, which being hard by *Jeruſalem*, is known to our age from *Abſalons* name, where yet, they [9] ſay, he hath a Monument, and ſuch as paſs by uſe to caſt ſtones at it, in deteſtation of his diſobedience: and alſo the very place where *Melchiſedek* gave *Abraham* the Bread and Wine, is, they ſay, yet known on Mount [10] *Calvary*. But hitherto briefly of theſe two Adjuncts of *Abraham*'s Tything; neither ſuppoſed I but that many which think of it for Argument either way, would deſire ſome ſatisfaction in them.

[1] *In Elench. Orat Chronol. Dav. Parei pag.* 35.

[2] *In lib. de Abrahamo.*

[3] *Epiſt. ad Evagr. tom.* 4.

[4] *In Epiſt. ad Ebr. cap.* 7. 2.

[5] *Joh.* 3. 23.

[6] Vide *Midras Tehillim*, apud *Galatin. de Arcanis lib.* 3. *cap.* 9.

[7] *Gen.* 14. 17.

[8] 2 *Sam.* 18. 18.

[9] *Etzelenbach. in Peregr.* 14. *Julij.*

[10] *Villamont. des Voyages liv.* 2. *Chap.* 13. & 19.

Of the II. Chapter.

HItherto could I never ſee any Chriſtian that hath fully taught what was conſiderable in the general payment of Tythes among the *Jews*. The Noble and moſt learned *Joſeph Scaliger*, did not every way enough accurately teach it, although in a ſingle Treatiſe he purpoſely undertook it. How ſufficiently among us, others do that ſlothfully and ignorantly, (without his help) while yet their end

XUM

h to write of Tythes, talk of a *third Tythe* here. and a *fourth Tythe*, and Indeed they know not what Tythe, let him judge that shall hence know their error. This last Spring Mart, in the title page of *Druſius* his obſervations upon *Joſhua* and ſome other parts of the old Teſtament, a new diſcourſe, *De Decimis Moſaicis*, writ en by *Sixtinus ab Amama*, Profeſſ r of *Ebrew* in *Franeker*, was promiſed; but I could never yet ſee any ſuch thing joyn'd with that of *Druſ.* or otherwiſe publiſhed. What we have of them, is as the great Doctors of the *Jews* have deliver'd in the *Talmud*, and their later Comments, which are teſtimonies beyond exception, for the practice or hiſtorical part. For that in Sect. 6. of ἀποδειξις τῶν δικαιωμάτων, cut of *Epiphanius*; I rather think indeed, that it denotes only a paying of Tythe, not a Tything of what was already tythed It is well known that the language of the Greek Fathers. eſpecially of about his time, is frequently mixt with phraſes of the *Septuagint*; now they [1] have ἀποδεκάζειν τὰ δεκατεύοντα & δεκάτευειν, for nothing but to pay a Tythe, which agrees ſ. mewhat with the *Ebrew* faſhion of expreſſion; and as they, ſo *Epiph.* without doubt underſtood it: however, ſ me of great Names are of another mind. But to what is there toucht for the forwar reſs of payment of firſt fruits among them, I here add out of [2] *Philo* (who lived under the time of the ſecond Temple, and ſpake of his own knowledge) that they were paid in ſuch abundance, ὡς ἐκ τῶν ἀπορρήτων τῶν ἱερείων ὑπερβαλλόντα πρωτογενείας τροφῶν ὑπερφυᾶ δοκεῖν εἶναι), that is, that even from the abundance only of firſt-Fruits, heave-Offerings, or Therumahs, which were paid by the owner im rediately to the Prieſts, there was not a Prieſt in the XXIV courſes of them (ſo the Prieſts or Poſterity of *Eleazer* and *Ithamar* were divided [3] by K. *David*) but might be accounted a very rich or largely furniſht man; and he tells us further, that the *Jews* were ſo ready in paying them, that τὰς ἀπογραφὰς φθάνοντες, τὰς προσόδους ἐπιτίμους, καμιζόντων ἀλλ' ἢ διδόναι τιμίζοντες, μετ' εὐφημίας καὶ εὐχαριστίας καὶ ἐκάστου τῶν ἐπιόντων ἀῶν πανδήμους τὰς εἰσφορὰς ἀνδρῶν ἅμα καὶ γυναικῶν ἀδιαλείπτου προθυμίᾳ καὶ σπουδῇ πάντα λέγω χαρᾶς γεμούσας, that is, *They prevented* the Officers *demanding them, paid them before they were due by Law, & as if they had rather taken a* benefit *than given many, both ſexes of their own moſt forward readineſs in every firſt-fruit ſeaſon brought them in with ſuch courteſie & thankſgiving as is beyond all expreſſion.* All which is ſpoken only of firſt Fruits and Therumahs, not of Tythes, as it is falſly in the Latin tranſlation; where ἀπάρχεσθαι alone is ignorantly underſtood for Tythes paid by the Laity to the Prieſts, the truth being that the Laity paid only firſt Fruits, not Tythes, immediately to the Prieſts, but only to the *Levites*, that is, thoſe which were as *Philo* ſays, ἐν δευτέρᾳ τάξει, that is, *in the ſecond rank*, and ὑπάρχοι, or as Wardens, Huſhers, Singers, and other ſuch Miniſters. And the *Levites* paid the Tythe of their Tythe to their Prieſts, who ſo through the *Levites* receiv'd tythes

[1] *Gen.* 28. *ult.* *Deut.* 16. 12.

[2] *Lib.* de τῶν γένεσ. ἱερέων.

[3] 1. *Paralip.* 24. 4.

cut of the possessions of the Laity, as also the holy Author to the *Hebrews* is interpreted, where he says, *That those of the Sons of Levi that had receiv'd the Priesthood, had a Commandment to take Tithes of the people according to the Law.* For the posterity of *Aaron* that had the Priesthood, receiv'd none from the people, but immediately and through the *Levites*. In the same holy Epistle their continuance of payment of Tithes (which as long as their Priesthood *de facto*, and the politique Form of Government, instituted by the Almighty, continued, was even *ex conscientia* to be performed, as some [r] teach) is also manifested after *Philo*'s time. The *Jews* are told in it, that *here men that dye receive Tithes, but there he of whom it is witnessed that he liveth.* That *here*, being plainly referr'd to the use of the *Jews* (to whom the Epistle was sent) under the second Temple. So *Primasius* an old *African* Father interprets it. *Hic inquit*, (saith he) *hoc est in praesenti seculo, vel in Templo quod adhuc stabat, Morientes homines, filii videlicet Levi qui mortales ac moribundi sunt, Decimas accipiunt.* But about this time also it appears in story that Tithes were still paid by the *Levites* to the Priests. which supposes the peoples payment to the *Levites*. Remember that of *Fl. Josephus* [s] where he tells, that when *Felix* was Lieutenant of *Judea*, such a tumult and sedition happened 'twixt the High-priests (ἀρχιερεῖς) and the rest of the Priests, and the chiefest of the Laity; that the High-Priests to satisfie their malice upon the rest of the Priests, violently took away the Tithes that were kept in Granges and Barns for their maintenance, and in so much wronged them, that some of the poorest of them even dyed for want. This was about the beginning of *Nero*; and [t] *Eusebius* and [u] *Nicephorus* relating it from *Josephus*, refer it to him; although *Ruffinus* in his Translation of *Eusebius* rather place it under *Claudius*, but under both *Felix* was Lieutenant. By the way you may note, that in *Nero*'s time divers of the Priests were grown much poorer than they had been lately before; if *Philo* be to be credited, who liv'd also but little before *Nero*'s Empire. It was very hard with some of them (it seems) that the taking away their Tithes only should starve them. Those High-Priests here spoken of are such as were the chiefest of the XXIV Orders; for [x] so also were the Priests devided. There was never but one High-priest properly, and that according to the first institution; but others that had a Supremacy among those Orders, were also called so, as both here and in [y] holy Writ, and they were, to the High-Priest, as the Συγκελλοι [z] in the *Eastern* Patriarchats which are as Suffragans to exercise the Patriarch's Office in his absence, or as the Bishop-Cardinals in *Rome*; and the first and chiefest of these High-Priests in the plural number, was as a designed successor to him that properly bare that name, and was his prime Vicar, chief Suffragan, or the second Priest, as [a] *Zephaniah* was to *Seraiah*, and as *Annas* to *Caiphas*. For so the most learned understand that of them two, being High-priests together in the Gospel, but this by the way;

[r] Videsis *Suarez de Legibus lib. 9. cap. 19. Sect. 16.*

[s] *Archaolog. lib. 20. cap. 6.*

[t] *Eccles. Hist. lib. 2. cap. 20.*

[u] *Lib. 2. Eccles. cap. 26.*

[x] *1. Paralip. 24. 4. 5.*

[y] Vide *D. Mat. 26. 57. & 59.*

[z] Videsis *Scalig. in Prolegom. ad Chronic. Eusebii.*

[a] *2 Reg. 6. 25. 18.*

way; yet who knows not, may soon stumble at the Story; and, if not admonish'd, trouble himself with as good a disquisition about it, as that Abbot [9] *Paschasius* long since fell into about what follows out of S. *Matthew*, in the 7. Sect. where the strict payment of Tithes used among the *Scribes* and *Pharisees* is spoken of. He being too ignorant of the particulars of the *Jewish* State, doubted much how the *Scribes* and *Pharisees* should so pay their Tithes, *Cum ipsi* (as his words are) *Sacerdotes erant & Levitæ qui magis accipiebant Decimas à populo quam darent.* But I wonder what made him so much as dream so; indeed he answers himself also. But plainly the *Scribes* and *Pharisees*, as known by that name only, had no more reference to the Tribe of *Levi* than to any other of the Twelve. Children in the holy Text, or the *Jewish* story, know it.

[9] *Paschas. Ratbert. Abbas Corbiens. Matt. lib.* 10. *pag.* 591.

That general rule of their Lawyers in the same Sect. taken out of *Rabbi Ben-Malmon*, is first in their [1] *Talmud*, where also the *Gemara*, that is the following Opinions of their Doctors, hath many special cases of this or that fruit or increase of the Earth; but often little to the purpose; one thing their *Misnah* or Text adds further to that rule; that is, whatsoever fruit or herb is fit to be eaten, both while it is young or new, as also when it is a full growth, must pay Tithes as well when it is young, as at full growth; but if while it be young it be not fit to be eaten, אינו חייב עד שיעשה אוכל that is, *it is not subject to tithe until it be come fit to be eaten.* That in Sect. 8. of them that take the profits of Land among the *Samaritans*, or in *Aram*, that is, *Syria*, must be understood of a *Jew* dwelling among them, and tilling the Land there. For regularly, if the fruits of Lands in *Syria* were taken by a *Jew*, residing still in his own Country, he was to pay [2] Tithe of them.

[1] *Seder Zeraiim Mass. Maighsh. Perek* 1. *Sect.* 1.

Touching their Tithing after the second Temple destroyed; although for want of a Temple and a Priest-hood at this day, they Tithe not legally, yet among their Aphorisms both Divine and Moral, they [3] tell us, that as the *Masoreth* is the defence of the Law, so מעשרות סיג לעשר *maighsheroth seag laigl'shor*, that is, *Tithes paid are the defence of riches.* Whereupon one notes, that at this day *qui religiosiores sunt inter Judæos, loco Decimarum, eleemosynam pendunt de omnibus Lucris; decem aureos de centum, centum de mille*, &c. But however the devouter of them may give such Alms, it is plain that their Legal Tithing hath now no place among them for want of a sufficient Priesthood and Temple or Tabernacle; yet without doubt, most of them have long since expected a [4] third Temple; otherwise why were they so careful to have their Laws and special cases of first Fruits and Tithing, so copiously deliver'd in five whole *Massechaths* of their *Talmud*, or body of their Civil and Cannon Law which was, many years after the destruction of the second Temple, made for the direction of the dispersed of their Nation?

[2] *Talmud. dist. Seder. Mass. Demai Perec.* 6. & *Massec. Maighsh. Perek.* 5. *Sect.* 5.

[3] *Pirki. Aboth. cap.* 3. & notæ adjectæ.

[4] Videsis *Galatin. de Arcanis lib.* 5. *cap.* 9.

Now, methinks, he that argues for Tithes from the Mosaical Laws

Laws of Tithing had need more specially, than any I have yet seen hath neer done, examine which of the two kinds are due in the Evangelical Priesthood. Why not the second as well as the first? and further consider also how the payment of Tithes from the Laity to the Priests of the Gospel, succeeds to the payment from the *Levites* to the Sons of *Aaron*. But these considerations can only be, where the knowledg of fact precedes, for without exact distinction of their several Tithes, any Argument drawn from them, may soon be found a gross fallacy, that may both deceive him which makes it and those whom he teaches. Let the ingenuous Reader think of it.

But one thing more here by the way. So much either ignorance or neglect in the disquisition of what belongs to the Tithes of *Jews*, hath possest some great names, that, touching the proportion of the Tithes and the Receivers, they have rested fairly satisfied in this; that the *Levites* being one of the twelve Tribes, had the Tenths as a competent maintenance to themselves, being near the Tenth, that is, being the twelfth part of the people; as if Arithmetically the People and the Revenues had been so divided. But others have long since easily shewed the slightness and falshood also of this fancy: And clearly had such a near proportion of persons and the name of Tenth held; yet examine all that was paid to the *Priests* and *Levites* in first Fruits, and the several predial Tenths only, and it will be near a fifth; and we here omit also the Cities and Suburbs assigned to them, and their other many profits out of Sacrifices, ransoms of First-born, and the like. But for that proportion of number betwixt the Tithes, we have sufficient Testimony in holy * Writ, that it was far otherwise. The able men for Arms of the eleven Tribes were numbred to 60;550. and these all of XX. years old at least; the Males of the *Levites* from a month old were severally found to be but 22273. for so are the particulars of the Families of *Gerson*, *Kohath*, and *Merari*. Here then the *Levites* reckoned, with advantage of all their Male Children of above a month old, make not a $\frac{1}{27}$. of the rest of the Tribes; had the rest been accounted also with all their Males of like age, it is probable enough that the Male *Levites* would not have equalled a fiftieth or sixtieth part even in the one Sex of them, the conjecture may also be in the other: and afterwards likewise † in *David*'s numbring, we see the *Levites* of 3 year old were less than $\frac{1}{32}$. part of the rest of *Israel* and *Juda*, that were able to bear Arms: Where then is any thing towards proportion 'twixt the number of the Priests and *Levites*, and the denomination of the Tithe? Neither is it to any purpose or consequent to look after any such thing: I rest in this, that it pleased the Almighty so to enrich that Tribe, which was reserved only for the holy Service in the Temple: Why he did so, or with what proportion, let them, for me, examine, who dare put their prophane fancies to play with his holy Text, and so most impudently and wickedly offer to square the one by the other.

* *Numer. cap.* 1. & 3.

† Vide 1 *Sam.* 24. 91. *Paralipom* 23. 3. & 27.

Of

Of the III. Chapter.

IN it, largely out of original Autors of *Greece* and *Rome*, is shewed the use of Tithing among the Gentiles, far more largely than by any that hath yet toucht it. The truth also, wherein too many are either obstinately or ignorantly blind, touching that of their supposed general payment, collected out of a corrupted place in *Festus*, or rather in *Paulus Diaconus*, is declared and brought to its own limits: neither will any judicious Reader doubt of the corruption of *Festus* in that place: whosoever knows but the fashion of his writing (which must be observed in that of his own, after the XI. book, partly yet remaining in his very words) cannot at all think, that *Decima quaq; veteres Diis suis offerebant*, should be delivered by him: he is in all other things more curious; he would not have talkt of *Diis* generally or *quaeq*. But it was no such wonder that *Paulus Diaconus*, who ignorantly abridged him under *Charles* the Great, should say so; being, as the learned acknowledg him, no small Enemy to Posterity, in so cutting and maiming him: he was (says [1] the noble *Scaliger*) *Homo meo judicio confidentissimus, ac, uti res ipsa docet, ineptissimus*. Had he dealt with *Festus*, as *Festus* did before with *Verrius Flaccus*, it had been tolerable; though by *Festus* perhaps we have lost much of *Flaccus*, yet he appears judicious enough and careful in what he delivers from him. But this *Paul* (being, I confess, otherwise a man of great reading and knowledg for the time he lived in) hath not only here by conjecture, but in other places most plainly so exprest things of this nature, that is, touching the Theology or Rites of the Gentiles, that, had we not found some pieces of *Festus* himself, Posterity might have been perpetually blinded by him. No man will deny it that observes but his words, *Malevoli*, *Nixi Dii*, *Praeclamitatores*, *Navia*, and divers other which, compar'd with what is left of *Festus* whence he had them, appear to be either mistaken or falsly deliver'd. But for the Gentiles; it is true, they were very devout in giving of their yearly increase to the honour of their Deities, according as the *Antique* Law received, as is thought, from *Triptolemus*, and seconded by [2] *Draco*, commanded; that is, Θεοὺς κάρποις ἀγάλλειν that is, *To honour the Gods with their fruits*; witness enough of the *Grecians* is found in their *Thalysia* that was the Feast immediately after Harvest wherein they spent [3] much of their fruits in honour of *Ceres*, in their *Halos* about the same time which was [4] the like devotion to her and to *Bacchus*, and in their several *Dionysia*; all which spent no small part of their yearly fruits of Wine and Corn: that we may omit their other Feasts of less note that are to this purpose. And among the *Romans*, was a like forwardness to consecrate part of their Corn and Wine to the Gods; as we see in their *Sacrima* [5], that is, the first of their Must, spent in the honour

[1] *In Epist. nuncupat. ad I. Moulucium.*

[2] *Hermippus apud Porphyrium* περὶ ἀποχῆς ἐμψύχ. *lib.* 4.

[3] *Theocritus Idyll.* 5. *& ibid. Scholiastes.*

[4] *Eustath. ad Iliad.* α.

[5] *Festus in hisce voc.* ad quem vide *Ios. Scalig. & in Conject. ad Varronis de L. L. lib.* 5.

of *Bacchus*, their *Calpar* or the first and best of their Wine, as it was when they first began to draw it, sacred to *Jupiter Dapalis*, their *Præmessum* or *Præmetium* before Harvest, their *Florifestum* after Harvest, both bestowed in honour of *Ceres*, and the like more to her and to *Jupiter*, *Janus* and *Bacchus*; that we may omit their *Robigalia*, *Solitaurilia*, and the rest of such kind. But all these plainly were at the liberty of the Owners, and so was it expresly denoted in the ritual words of sacrificing of their new Wines, as [6] *Macte, or Mactus Jupiter hoc vino inferio esto*, as if they'd said, *Be honord* Jupiter *with this Wine, which is as much as I can spare thee*; for so much is in substance denoted by *inferio*, that is, *Vino quod infertur*; and therefore was that word [7] added because all the rest might be free from Religion after this were so severally sacrificed. For until the Sacrifice, all the Wine remained so sacred that it might not lawfully be medled with for common use. But the owner might by such Arbitrary giving his *inferium*, discharge it of being any more sacred; and thereupon says *Arnobius*, jesting at their Ceremonies, *Mactus hoc vino inferio esto, quid est aliud quam dicere, tantum esto mactus quantum volo; tantum amplificatus quantum jubeo; tantum honoris assumito quantum te habere decerno, & verborum circumscriptione definio. O Deorum sublimitas præpotens, &c. quæ per unius formidinem verbi ab immodicis vini cupiditatibus arcetur!* Among all these feasts not any mention is of a Tenth or any certain part. But the Tenth came sometimes only at the Will of him that had good fortune, or *post rem bene gestam* as [8] *Servius* his words are. So *Hersennius* who had been a Piper all his youth, and doubting the success of that Trade, fell thence to be a Merchant, and then *re bene gesta Decimam Herculi dicavit*. That consecrating use to *Hercules* was most usually made with solemnity at that *Ara Maxima*, near the *Forum Boarium* or the Ox-market, upon which, some [9] say, but fabulously enough (as the rest of these particulars are delivered) that *Hercules* himself first spent the Tenth of what he took from *Cacus* in a jolly Feast, with *Evander* and the rest that honor'd him for it: and upon that Altar, says *Halycarnasseus*, δεκατεύσι χρημάτων γίνονται συχναὶ κατ' εὐχάς, that is, *Tithes are there frequently offered by vow*. But the payment of that vow was commonly in feasts made in honour of him; and those feasts were, it seems, in ancienter times, until the Vow was performd, celebrated within every ten days by such as were so religious to him; and in that division of time, for the more convenience of entertainment, his Tith was merrily spent, and the Guests always sent home crown'd with Bayes in honour of him. So I understand that of *Varro* †, when he tels us, *Majores solitos Decimam Herculi vovere, nec decem dies intermittere quin pollucerent ac populum ἀσύμβολον cum corona laurea dimitterent cubitum*: and of this kind of Feasts were those Dinners of *Orestes*, spoken of in * *Cicero*, *Oresti nuper prandia in semitis Decumæ nomine magno honori fuerunt*. It seems their vow both of gain and spoiles of War, was made to him

[6] *Cato de re Rustica cap. 132.*

[7] *Trebatius apud Arnobium adversus Gentes lib. 7.*

[8] *ad Æneid. 8. commat. 30.*

[9] *Halicarnass. Ρωμ. Αρχαιολ. α.*

† *Apud Macrobium Saturnal. lib. 3. cap. 11.*

* *De Officiis lib. 2.*

him chiefly as he was their God of War or of defence. For it is clear not only in the old *Roman* Divinity or Mythology, that *Hercules* specially was accounted *Mars* (as is plain by their Monuments, which shew that the Institution of *Sacra Salaria* were indifferent to *Hercules* or *Mars*, and made to one Deity under those two names) but also by the old Astronomy, wherein the Planet *Mars* was likewise called [a] *Hercules*, and that not only by the *Chaldæans* (as *Macrobius* too rashly affirms) but also by the *Ægyptians*, from whom the knowledge of the Heavens came into *Europe*. For howsoever it be noted out of an old Glossary at the end of that most learned work of the noble *Scaliger* upon *Manilius*, that *Mars* was called among the *Ægyptians* Πυρόεις, suppose the *Northern Egyptians* about *Alexandria*, where they spake *Greek* (before the *Roman* Empire and afterward) and although [b] some other old Testimony, say they, styled him Ἄρης (not Ἄρης) yet *Achilles Statius* that was [c] an *Ægyptian* says expressly that *Pyrois* is the *Greek* name of *Mars*, and that in *Ægypt* he was call'd the *Star of Hercules*. So the Author of that περὶ κόσμου, attributed to *Aristotle*; ὁ Πυρόεις ὁ Ἡρακλέους τε καὶ Ἄρεος προσαγορευόμενος, that is, *Pyrois being call'd both* Hercules *and* Mars; which *Apuleius*, because *Hercules* was not so common a name for it, thus turns, *Quem multi Herculis, plures Martis stellam vocant*, and his common Titles in old Inscriptions justifie the same. *Invicto*, *Victori*, *Defensori*, *Pollenti*, and such more are frequently his Additions, being proper to *Mars*; and under some such Title was he worship'd almost in every City of [d] *Italy*: and I would *Varro* had rather here sought the cause of his Title of *Victor* than in that ridiculous reason which he brings, [e] *Quod omne genus animalium decies viceret*; had he said that therefore also the Tithe was given him because of *Decies*, he had spoken as probably and as wisely. Indeed it is a wonder to see a man of that abstruse learning and great Abilities, that *Togatorum Doctissimus*, to be so childish as he often is in unhappily troubling himself about derivations. But of *Hercules* enough. Beside that of the maritime *Pelasgi*, in Sect. 1. the other of them that seated themselves further into the Land in *Umbria*, being opprest with a sterile year, vow'd the Tenth, δεκάτας τῶν προσγενησομένων ἁπάντων, that is, *The Tithe of all that should encrease to them*, to *Jupiter*, *Apollo*, and *Cabiri*, and this they paid also; but they were admonisht by *Apollo's* Oracle, that their vow was not performed until they had sacrificed also the Tithe of their Children, which was done also. But now see (when you truly know the ancient Tithing among the *Gentles*) how well they conclude here that draw Arguments from the General Law of Nature or Nations, as if by that Law any such use of payment of Tithes had been established among them, as was continual or compulsory.

[a] *Plin. Hist. lib. 2. cap. 8.*

[b] *Vettius Valen. Antioch. lib. 6. Antholog. Ms.* Sed verba ejus reperiuntur *in Syntagm. 1. De Diis Syris c. 6.*

[c] *In Arati Phænomena.*

[d] *Halicarnass.* Ρωμ. ἀρχαιολ. α.

[e] *Apud Servium ad Æneid. 8. comm. 30.*

[f] *Myrsilus Lesbius apud Halicarnass.* Ρωμ. ἀρχαιολ. α. *citatur Historia etiam apud Eusebium in* λογ. τριακονταετηρικῷ.

Of the I V Chapter.

THat which succeeds is only of Christian *Practice*, *Laws*, and *Opinion*, Which, any man that sees but the course of our division, may easily know, though he were as perverse as he was that to confute me in assertion here *of no proof of payment of Tythes, till towards the end of the first* CCCC. *years*, confidently brought that Text of the holy Autor to the *Hebrews*. [6] *Here men that dye, receive Tythes*: and was ready to sing *decidit in casses*, &c. as if that had prov'd a payment in the Apostles time: indeed it proves a payment among the *Ebrews* or *Jews*, then, and also is seconded by other Authority before touched; but any reference there had to a *Christian Practice* of Tithing, I suppose no man will affirm that is of a sound brain, and uses holy Writ with due reverence. But my application of some passages in St. *Cyprian* in Sect. 1. here are found fault withal; in that I understand not his mention of the word *Decimæ* to be a note of payment of Tythes in his Age. Indeed I did not think that any man which understood *Cyprian*, with the use of his time in making up the Ecclesiastick Treasure, would have therein taxed me. Neither have I given his words alone & then my own Glosse (as many have done too often, and that in things of the nature of this subject, and so have deceiv'd their credulous Readers) but I have carefully and shortly exprest also the occasion of his Passages; and so, then an understanding Reader may collect as much out of them as he might do if he had the whole context of *Cyprian* by him. If I have erred in the interpretation, it is but my single error, and theirs that dare give autority here to my judgment; whoever can think otherwise by *Cyprians* words, if he saw him, may equally do so by my relation: however then, I impose not on any Reader. But for that second place of his out of his *De Unitate Ecclesiæ*, observe his words more fully. Thus they are, *Domos tunc & fundos venundabant, & thesauros si in cœlo reponentes, distribuenda in usus indigentium pretia Apostolis offerebant. At nunc patrimonio nec Decimas damus; & cum vendere jubeat Dominus emimus potius & augemus.* So far is this from denoting any payment of Tenths of annual increase (which is the Tithe we enquire after) that indeed no such Tenth seems here to be understood in the mention of *Decimæ*: he speaks of them which sold their whole estates in the Apostles times: but now, saith he, *we give not the Tenths of our Patrimonies*; that is, we give not the Tenth part of what devout Christians then did, but instead of selling for devotion, we buy and encrease our estates. What other Tenth is here spoken of than the tenth part of every mans Patrimony or Estate? and what hath that to do with the tenth of Annual encrease only? and, for any use of payment in this time, I was not so bold to make the Negative, that *no Tithes were paid*, but that *it could not be proved that any were.*

[6] *Ad Ebræos cap. 7. 8.*

He

He that can shew me ought omitted that might prove it, shall deserve and have thanks of me: In the mean time further to justifie what I affirm, take this of *Epiphanius* Bishop of *Constance* in *Cyprus*, that about the year CCC. LXXX. wrote against the Heresies of the Primitive times; when he [9] tels us of the *Tessaresdecatita*, or those which thought the holy *Easter* must be kept on the fourteenth Moon, acccording to the Law given to the *Jews* for their Passeover, and that because they apprehended that the keeping it otherwise was subject to the curse of the Law, he says, πάντα ἔχουσιν ὡς ἡ Ἐκκλήσια, that is, they *do all things or agree generally with the Church*, saving that they were too much herein addicted to the *Jewish* custom: and in his Argument against them, he shews, that the curse hath not reference only to the Passeover, but also to Circumcision, to Tithes, (περὶ δεκατώσεως) to Offerings. Wherefore (as he goes on) if they escape one curse, by keeping their *Easter* according to the Law of the Passeover, they thrust themselves into many other. For (saith he) they shall find them also cursed that are not Circumcised, and them cursed that pay not Tithes, and them cursed that offer not at *Jerusalem*. Let any man now consider if this Bishop that was least unacquainted with the customes of the *Christian* Church, understood not clearly that no necessary or known use of payment, was among *Christians* in his time, of Tithes, no more than of Circumcision, or offering at *Jerusalem*. Doth he not plainly reckon it as a thing not only not in Christian use, but even equals it with what was certainly abrogated? is not his Objection shortly thus? Why do you not observe Circumcision and Tithing, and Offerings also at *Jerusalem*, which are all subject to the like curse? and because some kind of Offerings were indeed in use among Christians, therefore in the Objection he providently ties them to *Jerusalem*; but of Tithing he speaks as generally as of Circumcision. Observe his own Context, which I here give, that the able Readers judgment may be free. ὥστε οὖν εἰ μίαν κατάρσαν περιφεύγασιν, εἰς πόλλας ἑαυτοὺς ἐνέπεσαν. Εὑρεθήσονται γὰρ ἀπεκατάρατοι μὴ περιτεμνόμενοι, ἀπεκατάρατοι μὴ ἀποδεκατοῦντες, καὶ ἀπεκατάρατοι γίνοντας μὴ εἰς Ἱερουσαλὴμ προσφέροντες, that is, *So that if they avoid one curse, they fall under many other. For such shall be also found accursed as are uncircumcised, such accursed as Tithe not, and they are also* (in the old Law) *that offer not at* Jerusalem. I confess, this may perhaps seem not to extend to the *African* Church (wherein S. *Cyprian* and S. *Augustine* liv'd) that was far remote from *Epiphanius*, being of the *Greek Eastern* Church, and so not to sufficiently prove that in those times no payment was in use there. The like perhaps may be obviously thought of in referring it to the Western Church of *Europe*. But it seems that the *African*, *European* & *Eastern Greek* Churches of those times, had little or no difference twixt them in the setled policy for their maintenance. And for the *African*; however out of S. *Augustin*'s Sermons it may be collected,

[9] *Haeresi* 50.

that a payment soon afterward was there in use; yet herein both the *Greek* Eastern, and the *African* Churches are specially so like each other, that neither in the Councils or Canons of the one or the other of them, any Law at all is found for payment or ordaining any thing touching Tythes; nor, as I remember, doth the name of Tythes once occur in them, or in *Photius* his *Nomocanon*, or in *Zonaras*, or *Balsamon*, the chief Canonists that writ on the *Eastern* Canons: I mean here the Canons of the *Greek* Church of credit, not including those called the Apostles Constitutions, equally belonging to all Churches (if under that name to any) of which more presently. But it had been little to the purpose indeed to have had Tythes of Annual Increase paid, while that most bountiful devotion of good Christians continued in frequent Offerings, both of Lands and Goods to such large value, as you see exprest in that of the Governour of *Rome* to S. *Laurence* (being Archdeacon to Pope *Xistus* the second) in the ninth Persecution under *Decius*. He tells him, [10] that the common fame was, that the Christians did often

[10] *Apud Prudentium* περὶ στεφάνων. *hymn.* 2.

Offerre, fundis venditis
Sestertiorum millia.

And that

Addicta avorum prædia
Fœdis sub auctionibus,
Successor exhæres gemit
Sanctis egens parentibus.

Et summa pietas creditur,
Nudare dulces liberos.

no doubt can be but that the Governour is here made to speak somewhat beyond the truth: But also questionless the liberal devotion of the time was very exceeding in offerings.

But, for Constitutions of this age, lest we should seem to omit any thing that bears the name of one, although meerly supposititious, we shall here add more to that cited in the 4. Sect. out of the old *Clementines* attributed to the Apostles, but all will be of equal credit; and were it not for the inequality of Readers, none of it indeed deserved a place here. In those *Clementines*, a further command is, to *give* [1] *all thy Tythes to the Orphan, to the Widow, to the Poor, and to the Stranger.* And afterward some Constitutions attributed to S. *Matthew* are inserted; wherein first is ordained the formal Consecration of Oyl and Water, that may have power to heal sick men, to cast out Devils, and the like, with Ἐγὼ Ματθαῖος διατάσσομαι, that is, *I* Matthew *ordain*; and then ἔτι προστάσσω πᾶσαν ἀπαρχὴν προσκομίζεσθαι τῷ Ἐπισκόπῳ καὶ τοῖς Πρεσβυτέροις καὶ τοῖς Διακόνοις εἰς διατρο-

[1] Διαταγαὶ τῶν ἀποστολ. βιβλ. ζ. λα. & η. κατ. λ.

τροφὴν αὐτῶν, &c. πᾶσαν δὲ δεκάτην προσφέρεσθαι εἰς διατροφὴν τῶν λοιπῶν κληρικῶν, καὶ τῶν παρθένων, καὶ τῶν χηρῶν, καὶ τῶν ἐν πενίᾳ ὑπεταζομένων, that is, *I further ordain, that all first fruits be brought to the Bishop, and to the Priests, and to the Deacons for their maintenance, and that all Tythes be offered for the maintenance of the rest of the Clergy, and of Virgins, and of Widows, and of poor People.* But here is no command of Tythes to be given to the Priests for their use, but only for maintenance of the less Orders of the Clergy, and of the Poor, and therein these Constitutions still agree with themselves. But, for the authority of them, take the judgment of our Church, and I think you shall have a general consent in this, that they are not of near the Apostles time, but counterfeits of far later age; and great men in the Church of *Rome* account them no otherwise, howsoever *Turrian* (that first publisht them in *Greek* out of three old Copies, as he says) would needs perswade the World that they are genuine, Apostolick, and collected by Pope *Clement* the first. But I would then he had also perswaded us, that the Apostles had taught that the Birth of our Saviour, or *Christmas* day, was to be celebrated on the XXV. day of *Decemb.* as in this supposititious [2] *Clement* is affirmed. The learned know that until about CCCC, years after Christ, that is till S. *Chrysostomes* time, that day [3] was not setled, but variously observed in the *Eastern* Church, which should have had special notice of the Apostolick Canons, and S. *Chrysostom* then learned the time of the XXV. of *December* (which yet most think not to be the exact time) from the *Western* or *Latin* Church. Is it likely that till then the Apostles Constitutions had slept? Besides, we see, that *Dionysius* that great Patriarch of *Alexandria*, although those of his See and himself were most curious in the determinations of Ecclesiastick times, could not find whence clearly to resolve that question to *Basilides* Bishop of *Pentapolis*, [4] καθ' ἣν ὥραν ἀπονηστίζεσθαι δεῖ τὴν τοῦ πάσχα ἡμέραν, that is, *At what hour after the last Saturday of Lent they should leave off that strictness* [5] *of fasting*, in joy of the Resurrection; or at what hour of *Easter* day, or the feast of the Resurrection should begin. *Basilides* tells him, some think at the Cocks crowing towards the morning, some at the Saturday evening, and *Dionysius* acknowledges that difference in use. But to set a certain hour of it, he answers him, is καὶ δύσκολον καὶ σφαλερὸν, that is, *both hard, and without sufficient ground*, and then falls to examine it by the holy History of the time of the Resurrection. But had these Constitutions been then in Authority, clearly *Dionysius* might soon have resolv'd the question, for in them it [6] is determined, that this strict fasting should be kept, but μέχρις ἀλεκτρυοφωνίας, that is, *until the time of Cock crowing*. This learned Patriarch (his *Greek* Epistle never yet publisht in *Greek*, with *Balsamon* upon him, was communicated to me by that most learned and courteous M. *Patrick Young*, in the rest of *Balsamon* Ms.) lived about CC. years after the supposed time of the collection

[2] *Lib.* 5. *Canon* 13.

[3] Vide *Clement. Alex. Strom.* α. *Epiphan. Hæres.* 51. & *D. Chrysost. hom.* εἰς τὴν γενέθλ. ἡμέραν.

[4] Apud *Th. Balsamon Ms. in Bibl. Patrij Junij.*

[5] Videsis (si hanc rem obiter velles explicationem) *Synod.* 6. *in Trulla Canon.* 99. & *ibid.* & *ad hanc Dionysii Epistolam, Theodorum Balsamonem*, & *Euseb. lib.* 5. *Eccl. hist. c.* 23. &c.

[6] *Lib.* 5. *Can.* 18. & 19.

collection of these Constitutions, and surely had used them if they had then at all been, and deserved credit, and who would have made a controversie about the holding of *Easter*, that had in those elder times found it so established as it is in those Constitutions? But it is not difficult to conjecture out of what kind of Shop they came, if you but note the supremacy of all Power [7] so arrogated in them to the Clergy: the Authors of them command that Priests be honoured as Kings and have tribute paid them as Kings, and are so bold as to apply that in [8] *Samuel*, touching what a King would do in taking from his Subjects, to the power of Bishops, as if they should do so, and they affirm it as much more reasonable, that Bishops should do so; and ordain also with διατασσόμεθα, that is, *We constitute*, the like wholly περὶ Ἐπισκόπων, that is, *touching Bishops*, as there, they say, is ordain'd περὶ Βασιλέων, that is, *touching Kings*, which well agrees also with their reckoning up of the ten Commandments, and making the tenth to be [9] μὴ ὀφθῆς πρὸς τοῖς ἱερεῦσι κενὸς, that is, *Thou shalt not appear empty before the Priest*. He that made these words to fill the place of one of the ten Commandments, seems not to talk like one of the Apostles. A thousand things more might be found to disprove the authority that some attribute to these Canons, and the Answers to *Turrians* Reasons for maintenance of them, are obvious enough. For my part, I think confidently that most of them, if not all, are hardly M. years old; and therefore no sufficient cause is, why they should have place of credit in any part of our Division, as they bear the name of *Canons* or *Constitutions*. For if they were in truth made so long after those whose names give them all their authority, they are all one, for *Constitutions* to be relied on, as if they had been but of yesterday. I only touche part of them in this first CCCC. years, as they were in the *Latin*, the *Greek* being neither then by me, nor much material; although some passages in other translations, and to this purpose, if not examin'd by the *Greek*, may soon deceive a Reader of too ready a faith. For one of those other Canons attributed also to the Apostles as Authors, and to this *Clement* as Collector, is translated, [10] *Aliorum Decima primitiæ fructuum omnium mittantur Episcopo ac Presbyteris, & non super Altare*; the *Greek* that is turn'd and set by the *Latin* in the same Volume, having not a syllable of Tythes, but speaks only thus. Ἡ ἄλλη πᾶσα ὤπωρα εἰς οἶκον ἀποστελλέσθω ἀπαρχὴ τῷ Ἐπισκόπῳ καὶ τοῖς πρεσβυτέροις, ἀλλὰ μὴ πρὸς τὸ θυσιαστήριον, that is, *Let all other fruit (being first fruits) be sent home to the Bishop, and to the Priests, but not brought to the Altar*; the meaning being, that only first fruits of new Grapes before Vintage-time, or of young Herbs fit to be eaten, or such like (comprehended under the words νέων χέδρων in the next Canon before) should be brought to the Church; and so are the Expositions of *Zonaras*, and *Theodore Balsamon*, two great Canonists of the *Eastern* Church.

[7] *Lib. 2. Canon 34.*

[8] *1 Sam cap. 8.*

[9] *Lib. 2. Can. 35.*

[10] *In Zonara, edito à L. Quintino Can. 4.*

Of

Of the V. Chapter.

THoſe Abbots ſpoken of in the 1. §. were not of the miniſtring Clergy properly taken; but only principal Governours of ſuch as had choſen a ſeparated and ſingle life; ſuch as are in good number found in *Palladius* his *Lauſiaca Hiſtoria*, *Caſſianus*, and the like more. For that of giving Tithes to the uſe of the Poor; it ſeems it muſt be underſtood that they were moſt commonly given into the hands of thoſe Abbots, or ſome of the Clergy for their uſe, and that they diſpenſed them; which may be collected out of the teſtimonies of that Age, wherein the goods and treaſure of the Church is accounted but as the Poors chiefly in property. Beſide thoſe attributes of Tithes and other things conſecrated, as *tributa egentium animarum*, and *patrimonia pauperum*, and the like; an obſervable admonition is, to this purpoſe, found in *Iſidore Peluſiota* (that liv'd about the beginning of theſe CCCC. years) made to one *Maro* a Prieſt (whom he often reprehends) but ſpecially g for not leaving the goods of the Church and of the Poor (that is, what was offered in Tithes, Rents, and other Bounties) to be kept only by the *OEconomus* or Diſpenſer, or Steward (who in thoſe Times received them for the Biſhop, and diſpenſed them by direction of him and his Clergy) but carried them home to his own houſe Παῦσαι τούτου (ſaies he) τ ἀσεβοῦς. Οἰκονόμῳ γὰρ ὑπάρχει παρὰ τὸ ἴδιον αὐτοῦ μέτρον τῶν τόκων. Οἰκεῖα δὲ αὐτῶν ἐκείνων τὰ ἐπιτηδεύματα, that is, *Leave off this wicked courſe: For the* Diſpenſer *hath his name from the Diſpenſing to the Poor what is theirs; as the goods of the Church are properly.* So S. *Baſile* h ſtiles the goods and revenue of the Church, ὕλαι τῆς πτωχῶν, and the *Greek* Lawyers call them generally i πτωχεῖα or *proviſion for the Poor.* And hence is it that divers Schoolmen to and fro diſpute that queſtion, whether the dominion or property of the revenue of the Church be in the Clergy; and whether what they give to the Poor be due *debito Juſtitiæ*, or *debito Charitatis.*

g *Lib* 1. *Epiſt.* 259. & *vide ibid.* 425.

h *In Epiſt.* 229. *edit. nuper à V. Cl. R. Montacutio.*

i *Balſamon & Zonaras ad Can. Apoſt.* 59 & vide de hac re *Anonymum de recuperat. Terra Sanctæ cap.* 34 in vol. *Geſta Dei per Francos* dicto.

I ſuppoſed enough had been ſaid in §. 3. to convince the common error of them, which derive Feudal Tithes from the Clergy of the time of *Charles Martell*, or affirm any common payment of them then in practice: But 'tis a hard task to teach obſtinate ignorance. Let that of *Eucherius* his viſion be as it will (which yet cannot ſtand with the time of his death, calculated according to the ſtory that remains of him; however indeed k very ancient Authors help to juſtifie it) it ſtill reſts certain that the Conſtitutions of his time, which have reference to the many ſacriledges committed by him and others, upon Monaſteries, Biſhopricks, and the reſt of the Demeſnes of the Clergy, never ſpake word of Tithes; and with that which is there noted in the margin, obſerve the ſeveral tranſcripts of that Law of Reſtitution, made

k *Vide Arnold. lib.* 1. *de Miracul. S. Benedicto cap.* 34. & *Flodoard. Rem. hiſt. lib.* 2. *cap.* 12. & *Capitular. exhibit. Ludovic.* 2. *Imper poſt Coronam* 59. *c.* 10 *q.* 1. *edit. Gregori-*

made in the *Synod* or *Diet* at *Ratisbon*, held under *Caroloman* in DCC. XLII. as it is in [l] *Melchior Goldastus*. In his first Volume he gives it thus, *Decimas, bona Ecclesiastica occupata à prophanis restituimus*; as indeed both [m] *Aventin* and the [n] *Centuriæ* have it also literally before him; both out of corrupted Copies. But afterward the diligent *Goldastus*, finding a better Copy, entirely again publishes the Laws of that Synod nearer the original; and this one [o] thus: *Fraudatas pecunias Ecclesiarum, Ecclesiis restituimus*. Some other Copies having *fundatas*, but none, of any authority, *Decimas*; *pecunia* being only their wealth or estate in Lands; as in more ancient time *pecunia* denoted chiefly estate in cattel, and then mony, as now it doth. I know also it had a signification that included offerings [p] of fruits and corn, and so might be drawn to denote Tithes offered, but that signification was of rare use, and only among the Gentiles. Neither (as I think with some confidence) can any man shew me such use of the word in any Christian Author of the Ancients. And the very degree of *Thierry* King of *France*, and that *Charles Martell* the *Maire du Maison*, of the year [q] DCC. XXX, touching the taking from the Clergy their possessions *ut subveniatur necessitatibus publicis & solatiis militum pro Dei Ecclesia, & bono statu Reipub. & uniuscujusq; propria pace pugnantium*, as the words of it are, and that of *Caroloman* [r] in DCC. XLIII. speak not a word of Tithes, but only of *terræ & Casatæ* (which were the *Ecclesialis pecunia*) and the small Rents to be reserv'd to the Church upon Leases made of them, which is, it seems, understood in the more common giving of them into Lay hands so much spoken of by *Flodoard*; that is, Lay men had the benefit of them by having Leases of them at small Rents without Fines. Neither is any other thing spoken of in the [s] Capitulary exhibited by the Bishops of the Provinces of *Rhemes* and *Rhosne*, to the Emperor *Lewes* the Second. When I see any testimony near *Martell*'s time that so may justifie the received tale of his prophaning of Tithes as I may change my mind. But seeing so much of his sacrileges left in the story of near his age, and that not a syllable touching such Tithes we here enquire after, nor any thing else that hath reference to the common payment of them, is found in the laws made under him, I shall remain confident in what I have admonished; and I think so will every man else that hath an impartial eye of judgment. But, for that which I have here noted touching *Casata*; perhaps *Casata* should rather have been interpreted a *Messuage*, or *dwelling-house*. For it appears in that Capitulary exhibited to the Emperor *Lewis*, and in some other testimony of that [t] time, that the reservations *ad restaurationem terrarum* (which may be satisfaction given by the Lessees of the Clergy, in Rents of Land) were *Nonæ & Decimæ* (where *Decimæ* have not to do with payment of Tithes out of meer Lay fees, but only were receiv'd by reservation) and out of every *Casata* xiid. So it may be that *Casata* is no quantity of Land there,

as

[l] *Constit. Imperial. tom. 1. pag. 15.*

[m] *Annal. Boiorum lib. 2. pag. 179. edit. Bas. a. d. 1615.*

[n] *Centur. 8. cap. 7. p. 9*

[o] *Tom. 3. pag. 117.*

[p] *Festus Paulli in Pecunia & ib. Scalig.*

[q] *Goldast. tom. 3. pag. 648.*

[r] *Idem tom. eod. pag. 118.*

[s] *Post. c. 39 c. 16. 9. 1. edit. Gregor.*

[t] *Vide Goldast. tom. 3 pag. 645.*

as I have conjectured, but a house only; if it be, you see whence I was deceived; pardon me, perhaps it was an errour. I willingly acknowledge so much upon this Review. I acknowledge it, if that Capitulary of the Bishops and the other testimony be therein authentick. I somewhat doubt them, because the most known and certain Laws of *Martell*'s time speak only of xiid. to be served out of every *Casata*, and the *Nonæ* and *Decimæ* grow not elsewhere into use till after the beginning of the *French* Empire; and if nothing but *Casatæ* were spoken of, there were reason enough why they should be taken for Land. But the *Nonæ* and *Decimæ* in those Autorities are referred to Land, and the xiid. only to *Casatæ*.

That, in the 4 §. of the Tithe of time in Lent out of St. *Gregory*, is not easily perhaps apprehended by every Reader without a little more explication. The Sundays as they were exempt out of the number of days, so were they from the fasting of Lent, thence comes his conceit of the Tithe of Time in XXXVI. days, which is $\frac{1}{10}$ of CCC. LXV. so Fractions be omitted; and to make up forty which is exprest in *Quadragesima*, the known name for Lent; the four days preceeding *Quadragesima* Sunday, are to be added; this was the intent of that fancy. But how sleight and nothing to the purpose, that observation of the Tenth of Time is (however the Canonists, as sworn to their Text, make of it) is easily seen, not only in the abused liberty of calculation of it, but also by the customs and Laws of both Churches, the West and East in their various limits of this time of fasting. Pope *Telesphorus* they x say, made it VII. Weeks; and other diversities hath it had in the Western Church; and the Eastern Church exempted y both Saturdays and Sundays from fasting through all Lent, except only the Saturday that next preceeded Easter Sunday; as also they fasted not on the day of the Annunciation. What regard had they then, think you, to the Tithe of time?

x *Anastasius in vita ejus*, & vide *Baronium sub ann.* 154. & *Polydor. de Invent. rer lib.* 6. *cap.* 3.

y *Synod.* 6. *in Trull. Can.* 55. & videsis etiam *Constit. Apostolorum dictas lib.* 5. *Can.* 13. 15. & 18. & Consule *Euseb. Eccles. Hist. lib.* 5 *cap.* 26. & *Socratem Hist. Eccles. lib.* 5. *cap.* 21

Of the VI. Chapter.

THe practice of payment in the third CCCC. years, was Parochially observed in some * places, but especially by Clergymen, to Clergy-men, who with such as (were reputed among them) subjected themselves more to their Canons than the Laity could be brought to do. But it seems somewhat plain by the many examples of Arbitrary *Consecrations* to Monasteries and other Churches, related in §. 2. (whereto joyn also the *English* practice in the XI. Chapter, and the a Charter of *Henry* the Eighth, Duke of *Baviere*, of the Tithes of *Ranneshofen*, given to the Church of St. *Pancrace*) that the payment of them Parochially performed by Lay-men, was yet frequently omitted or continued to their own wills. Whence otherwise could the Founders and Benefactors of Monasteries have made

* Præter ea quæ ad hanc rem §. 1. 2. & 3. habemus. Videsis *Hinc marum in opere Capitum* 55. *ad Loud. Episcop. cap.* 1. & *Rabanum* apud *Centuriatores cent.* 9. *cap.* 7. de jurejurando quod exigebatur nonnunquam de decimis rite solutis.

a Apud *Aventin. Annal. Bæorum lib.* 6. *pag.* 379. *edit. Bas.* 1615.

Tithes part of their endowments? it was not, in these elder times, so much by giving them Churches (as the most that speak of this, ignorantly think, telling us that all Tithes came into Monasteries by appropriating of Parish Churches) as by conveying to them divers Tithes alone and newly created; and after those gifts, Consecrations or new creations, no other Tithes were paid upon any other right, out of that Land which was so charged with them. But most of those Consecrations were at one time or another at length confirmed by Popes and Bishops, and so clearly after enjoyed; which plainly also supposed a former strength in them. For regularly, *Confirmatio ex proprio significatu denotat firmitatem actus confirmati*, as b *Panormitan* and other Canonists say, and *nihil* c *juris novi tribuit, sed tantum vetus confirmat.* But it is plain, that after Parochial right established, that is, since about M. CC. when the Canons grew more powerful and obedience to them became more ready, such confirmations by Bishops and Popes, and such consecrations, creations, or new grants by Laymen, of Tithes, have been taken and declared clearly void, as you may see in a degree d of Pope *Innocent* the III. touching Tithes, so granted by a Knight of *Berry* in *France*, and confirmed by the Archbishop, and c in another of his about Tithes so given or created to a Church by the King and Queen of *Hungary*, and after confirmed by a Pope or two; and who can doubt now but that all such grants (in regard of prevention of the Parsons right) be not only void by the practiced Canon Law of this day, but also by the Secular or Common Laws of most States (if not of all where Tithes are paid) in Christendom. For admit at this day, that *Titius* grant *Decimas suas* of such an Acre to the Parson, Abbot, or Bishop of such a Church, and this be confirmed by whom you will; the Tithe due from him Parochially is not toucht by it; why? because they are setled *jure communi* (as the Law is practiced) in the Parish Rector; but in those elder times, such an arbitrary grant vested the Tithe in the Church to which it was given, and no other afterward was paid. Why? because then notwithstanding the Canons, no *jus commune*, no Parochial right of Tithes was setled or admitted in the practice of the Laity. And for those ancienter grants, be not deceiv'd by such as tell you they were always of Tithes formerly infeodated from the Church; that hath no ground to justifie it, neither can any man at all prove any common course of such Infeodation of Tithes from the Church into Lay hands, to have been in any State till the later times of Reformation of Religion in some places, and dissolution of Monasteries, and those two examples which are in Pope *Innocents* decrees are expresly of new creations, at least not of infeodated Tithes, as every Canonist will acknowledge. But clearly they both were in themselves according to the many other, but they had not the fortune to be confirmed in such time as the Pope or Clergy usually gave way to the former practice of arbitrary Consecration.

b *Ad hæc, de Dec. & decim. cum.* 11.
c *Innocent. ad dict. loc. & tit. de confirm. ut & inutil. c. cum dilectis* 4.
d *Tit. de his quæ fiunt à prælat. sine Cons. c. 7. cum Apostolica.*
e *Tit. de Dec. c. dudum* 31.

eration. And doubtleſs alſo, after ſuch time as the Clergy ſaw that the Canons, made for Parochial right of Tithes, had gotten force, and that the former creations or grants of Tithes by Lay-men (which were indeed practiſed againſt many Canons both Papal and Synodal) were, by that name of Lay-mens grants, creation or conſecrations, declared utterly void by the Pope and his Canon Law, although confirmed by whomſoever; ſuch of them as had originally no other true titles to Tithes ſo commonly conſecrated by Lay-men, ſubtilly enough in the next four hundred years left off the pretence of their Lay grantors bounty (eſpecially if the Grantor had been a common perſon) and betook themſelves only to preſcriptions f of XL. years, and to what other times might be allowed to ſettle a right to them upon a poſſeſſion of Tithes; and, by that way, retained ſafely what otherwiſe, if they had held themſelves to the deeds of their Lay grantors and to confirmations, had been in danger enough of being recovered from them by Pariſh Rectors. So that, when the preſcription was good in regard of time and poſſeſſion; although the original Title it ſelf were naught; yet becauſe any other juſt Title might be pretended to ground the preſcription on (which alſo was g not of neceſſity to be proved in corporeal things) it was not difficult to have a fair courſe to maintain their poſſeſſions and right of ſuch conſecrated Tithes, as had been poſſeſt ſo forty years before they were queſtioned by Parſons which claimed them *jure communi*. For againſt them, ſuch a preſcription by any other Church, Abbey, or Biſhoprick, or ſuch like, is a good Title. Remember alſo their erecting of Parochial Chappels within the larger Territories, out of which they had portions plainly, the erecting of ſuch Chappels for Pariſh Churches (the Cure being there ſerved by ſome Monk or Vicar, inſtituted upon the preſentation of them which had the granted portions) made thoſe portions at length alſo in many places be reputed for Parochial Tithes, due in regard of thoſe Parochial Chappels. But what courſe ſoever they took; it ſeems certain, that the Title derived from Lay conſecrations were after this third CCCC. years carefully concealed by the Poſſeſſors in ſuch publick records of their Revennes, as were of more common and open uſe in their legal proceedings at the Canon Law, however they remained ſtill in their ancienter and more ſecret Chartularies; and with us I have very rarely, ſcarce at all, ſeen an Inſtrument of them in their Leiger books, or otherwiſe, written in a hand that is later than King *John*'s time; the moſt are before him. But I have ſeen Catalogues of the time of *Henry* the Third and *Edward* the Firſt, of many large portions of Tithes, that doubtleſs came firſt from arbitrary Conſecrations, and that through moſt of the Dioceſes of *England*, wherein not the leaſt mention is of any Grantor; only poſſeſſion is remembred; and that, by preſcription, was to be juſtified. Some Titles alſo I have ſeen made to Tithes in Libels of the time.

f *Extr. lib. in proſcript. c. 8. & 9.*

g *Vide Innocent. 4 ad tit. de præſcript. ſi diligentiis & ad tit. de Decim. c. dudum &c.*

time of *Henry* the Third, especially in the Lieger Books of *Reading*, *Osney*, and *Pipewell*; but in none of them ever any deriv'd from Consecrations. Neither indeed, in the ancientest Formulary of the Canon Law, (I mean *Durand*, that lived about CCC. L. years since) is any other Libel for Tithes, then such as make the Title Canonical. None that touches Lay consecrations; which divers years before his time became as much concealed in legal proceedings of the Canon Law, as they had been in the more ancient times desired and hunted after by such as were enrich'd by them. This of arbitrary Consecrations, I presume, is like strange Doctrine to most men. It may well be; for the truth of it, I think, was never before so much as pointed at by any that hath written of any part of our subject. But I doubt not but every understanding Reader will think these things here, now shortly noted on them, to deserve his consideration, which I desire him also to refer to the XI. Chapter; and also let him apply to them the Admonitions touch'd presently in Appropriations.

For *Appropriations* which are in the 3. §. they consisted (as you see there, and in the XII. Chapter) for the purpose, either in conveying *Parish Churches appropriated with Tithes* setled in them sometimes by a continuance of payment, sometimes by Consecrations, or by both; or of *Churches that were then appropriated, when* (according to the use of the time) *none or few Tithes were paid* to them, yet afterward in the hands of the Monks, or such like, when the Canons for payment of Tithes came into force, got Parochial payment to be made to them; or thirdly in passing of Tithes formerly created and in *esse*. So that as by *Consecration*, Tithes newly created, were setled in Monasteries and the like, so, by *Appropriations*, Churches with Tithes in *esse*, or with the pretended right to them, and Tithes alone (but formerly in *esse*) were convey'd to them. The whole Appropriation of Tithes with Churches, or Churches alone (we shew) in that ancienter time was made by the Patron. The Churches with Tithes (by the name of *Ecclesia cum Decimis*, when Tithes were paid to it) was in point of interest given by him. And many more Churches have been so appropriated, then by the later and more known course. Neither, I think, have many new Appropriations been since made; not many in regard of the number of the other. But deserves not this then another kind of consideration then is commonly dreamt on, among them which make Tithes due by the Divine Moral Law to the Evangelical Priesthood? If they be so; what had the Patron as Patron (were he either Temporal or Spiritual) to do with them in conveying them to Monks, Friers, Nuns, poor people in Hospitals? none of these, by that name, are of the Priesthood, and that way, they were so equally due to the ministring Priesthood before the Patron's title to the Church, that what ever he could do after he were Patron (though also his act were confirm'd by whom you will) could not at all, it seems, touch them, or convey

vey them from him that ſhould afterward exerciſe the ſpiritual function of the Church. Conſider Tithes ſo due, and how could any Monaſtery derive to it ſelf any Title to that ſelf ſame Tithe that was ſo due to the Prieſthood? And if it had not the ſelf ſame Tithe, but by preſcription or other civil Title, having the Glebe of a Church had alſo a profit by the name of Tithe as annext to the Church, no otherwiſe then other Lay endowments (for no man can doubt but that any kind of perſons may enjoy a profit under the name of Tithe or Tenth, aſwell as a Rent of the Ninth part or of the Eleventh) who then is it that now detains the Tithe due by the Divine Moral Law, in caſes of Appropriations? doth the Monaſtery, or thoſe which have ſuch appropriated Tithes by conveyance from it? or rather doth not the Pariſhioner, that is bound to whatſoever is by that Law due, although he pay never ſo many other Tenths due only by ſome civil Title? or by that Opinion, is not he that receives the appropriated Tithe bound to pay a Tenth of it to the Miniſter, and the Pariſhioner a Tenth of his Nine parts. I affirm nothing here, it is no place for me to do it. But let theſe things be firſt conſiderable to every one that talks of Appropriations, and concludes Tithes due *jure divino morali*. And, for Lay-mens right to the appropriated Tithes (that is ſuch as did either veſt in the Monaſteries by Appropriations, or at leaſt have been enjoyed by reaſon of them) let him examine it rather thus: may that which either Grant or Preſcription, or other civil Title once ſetled, and ſo even conſecrated to God and holy uſes, although abuſed, be afterward prophaned to Lay hands? But it is a groſs error to make it clear as many do, that if Tithes be not due to the Prieſthood *jure divino morali*, then Appropriated Tithes may be ſtill poſſeſſed with good conſcience by Lay-men; and that if otherwiſe, then they may not. For though they be not due ſo, yet is the conſecration of them in the Appropriation, nothing? for if they be not due ſo, then it will be clear, I think, to all, that they might paſs in the Appropriation, as other things, ſubject to the Titles of humane and poſitive Law. The many execrations annext to the deeds of conveyance of them, and poured forth againſt ſuch as ſhould divert them to prophane uſes, ſhould be alſo thought on, and let them remember alſo, who ſay, that h *it is a Deſtruction for a man to devour what is conſecrated.*

h Prov. 20, 25.

To what we have here of Epiſcopal right pretended to Tithes eſpecially in *Germany*, and of Tithes appropriated by Biſhops, you may add the Examples of *Thietmar* Biſhop of *Werden* in *Saxony*, that i about M. CXL. *Contulit Eccleſiæ ſuæ undecim Decimas, & Contulit fratribus Decimam in Eſſe.* As alſo his ſucceſſor *Hirman*, *Contulit Eccleſiæ ſuæ mediam Decimam de* Haſelwerder, *& integram in* Rakeſtede, *&* Tunderling; and *Luder* Biſhop there about M. CC. XXX. *Cantulit Eccleſiæ Decimam in* Emelendorp *cum advocatia*, and *ordinavit Scolaribus Decimam in Mindrop.* It ſeems this their giving of Tithes to their Church was an aſſignment

i Kranz. Metropol. lib. 6. cap 19. & cap 29. & lib. 7. cap. 48.

assignment of them to the encrease of their Prebends, or such like; for it cannot, I think, be understood of Tithes given to the Bishoprick by themselves, who as Bishops possest or pretended right to Tithes generally in their Dioces. But also, with that noted here touching *Gerold* Bishop of *Oldenburg* (or *Lubek*) his urging them of the Deserts of *Hungria* to pay; observe the words of his perswasive Letter sent to them to get their Tithes. *Deo*, saith he, [k] *gratias ago, quod multarum in vobis patent virtutum insignia, quod videlicet hospitalitati & aliis misericordiæ operibus propter Deum infatigatis, quod in verbo Dei promptissimi & in construendis Ecclesiis solliciti estis; in legitimis quoq; ut Deo placitum est, castam ducitis vitam, quæ omnia tamen observata nil proderunt, si cætera mandata negligitis, quia sicut scriptum est, qui in uno offendit omnium reus est, Dei enim præceptum est*, Decimas ex omnibus dabis mihi, ut benè sit tibi & longo vivas tempore, *cui obedierunt Patriarchæ, Abraham scilicet Isaac & Jacob, & omnes qui secundum fidem facti sunt filii Abrahæ, per quod laudem etiam & præmia æterna consecuti sunt. Apostoli quoq; & Apostolici viri hoc ipsum ex ore Dei mandaverunt, & sub anathematis vinculo posteris servandum tradiderunt. Cum ergo Dei omnipotentis proculdubio hoc constet esse præceptum, & sanctorum Patrum sit autoritate firmatum, nobis id incumbit negotii ut quod vestræ saluti deest, nostro in vobis opere per Dei gratiam suppliatur. Monemus ergo & obsecramus omnes vos in Domino, ut mihi, cui paterna in vos cura commissa est, animo volenti, quasi filii obedientiæ, acquiescatis, & Decimas prout Deus instituit & Apostolica Banno firmavit Autoritas, ad ampliandum Dei cultum & ad gerendum pauperum curam Ecclesiæ detis, ne si Deo quæ ipsi debentur subtraxeritis & substantiam simul & animam in interitum mittatis æternum. Valete.* It seems he was in some confidence, that because he was a Bishop, he might make them believe any thing of the Patriarcks and the Apostles, and you may see he loved the profit of the Tithes so well, that he would not stand upon any unlucky venturing his credit in Divinity, or upon offering a plain falshood, in writing for them. For though they were due generally as he would have them, yet how would he have proved that all the Patriarchs and all that were by faith as the Sons of *Abraham*, paid them? or that thereby they all had gain'd *præmia æterna?* and whence could he have justified it, that the Apostles ordain'd that they should be paid? it may be therein he meant the Constitutions of the Apostles, of which enough before; if he did, how could he have strengthened their Authority? but they to whom he sent remain'd still as far from obedience as the historical part of his Letter was from truth. And the truth was, he could by no means get any Tithes of them. But for that (in this §.) of Episcopal right, or the right of the Evangelical Priesthood, so much pretended against Tithes enjoyed by Monks, that were indeed Lay-men, however reputed as a kind of part of the Clergy: it seems that in those days the Bishops and Priests often stood so much on it, and so much and so often labour'd against

[k] *Helmoldus Presb. hist. Sclavorum cap. 92.*

againſt Conſecrated & Appropriated Tithes, poſſeſſed by the Monks (for they knew it was to no purpoſe to urge the Lay owners, who after they had given Tithe by conſecration would give no more to any of them) that the moſt common place which in their Synods and Sermons they dealt on, was the right of Tithes, as due to the Prieſthood: and ſo much alſo and ſo untimely was that common place uſed, that their talking of it was become a Proverb to denote their frequent going from the matter: as if moſt uſually they fell into that, when they ſhould have talkt of ſomething elſe. This is juſtified by a paſſage of the Monk *Aimonius* in the life of *Abbo* Abbot of *Floriacum*, where he ſpeaks of a Synod held under *Robert* King of *France*, about the year M. (when *Aimonius* lived) in the Abbey of S. *Dion.* Very many Biſhops, ſaith he, were preſent at it, *Qui cum de fidei puritate & de corrigendis tam ſuis quàm ſubditorum pravis moribus ſermocinari debuiſſent, juxta vulgare proverbium*, Cunctum ſuum ſermonem ad Decimas verterunt Eccleſiarum, *quas Laicis ac Deo ſervientibus Monachis auferre moliti, reſiſtente eis in hac re hoc V. Dei Cultore Abbone, promiſcuam in ſe vulgi concitavere manum*: and ſuch danger did the Biſhops, in urging it, draw on themſelves, that they were driven all to diſſolve the Synod by runing away: you ſee here *Sermonem ad Decimas vertere*, was as a proverb to go from the matter: and for thoſe words, *Laicis ac Deo ſervientibus Monachis*; I think, they are not to be interpreted *Lay-men, and Monks*, but *Monks that were lay, and ſpent their time in the ſervice of God.* For there is no doubt but the Biſhops and Prieſts objected the name of *Laici* to the Monks here; and ſo was it fit, in the relation, to name them: and it was no wonder that the common people (whoſe bounty, in beſtowing of Tithes on Monks, ſtould t' us have turn'd to nothing) ſo fiercely oppoſed them. If you underſtand *Laicis* by it ſelf here, then it may denote the arbitrary detaining or diſpoſing of Tithes by meer Lay-men, which I muſt confeſs, *Abbo* and his Monks and all other Monks whatſoever had ſome reaſon to withſtand. For they gained much by it. But, I doubt, it cannot have reference to Lay Infeodations. For as yet I could never ſee the leaſt teſtimony of an Infeodation of Tithes until many years after *Abbo's* time: it might perhaps denote them alſo: but I dare not clearly affirm or deny here.

1 *Vita Abbonis Floriac. ca. 9.*

The 4. 5. is of ancient *Infeodations* of Tithes. What is in old teſtimony of them, is there delivered: but for time; we neither fetch them from *Charles Martel*, nor from the holy War of between M. XCV. and M. C. as others do: plainly both thoſe Opinions are falſe. And it is as certain that they are falſe, as it is difficult to find the true beginning of Infeodations. Neither, I think, did any man ever refer them to *Charles Martel*, before *Martinus Polonus* Archbiſhop of *Coſenza* and Peni potentiary to the Pope, who wrote about M. CC. LXXX. *Eccleſias* (ſaith he of him) *ſpoliat, Decimas militibus conferendo*; and this being through many hands received, hath to this hour

d abus'd

abus'd many mens credulity. But thereof, enough already. They are as far out, that derive them all from gifts made by *Churches*, or impoſitions by *Princes*: yet that moſt common opinion, that they all came firſt out of Churches is elder than the other, and as ancient at leaſt as *Frederique Barbaroſſa*. For in the controverſy 'twixt him and Pope *Urban* the third about Inveſtitures, *Scimus* (are the *m* words) *Decimas & oblationes àDeo Sacerdotibus & Levitis Primitias deputatas. ſed cum tempore Chriſtianitatis ab Adverſariis infeſtarentur Eccleſiæ, eaſdem Decimas Præpotentes & Nobiles Viri ab Eccleſiis in beneficio ſtabili acceperunt, at ipſi defenſores Eccleſiarum fierent quæ per ſe obtinere non valerent.* There is no queſtion but this opinion had ſoon authors enough among the Clergy. For, the pretence of it was like enough a great perſwaſion to ſome Lay-men to give in their Infeodated Tithes to the Church, and this the Canoniſts, for the moſt part, and generally the Lawyers of moſt States, take for a clear truth: which I much wonder at, ſeeing that while they take it ſo, yet they interpret that *n* Canon *Prohibemus* (which is the principal proviſion againſt Feudal Tithes, and was made by a Council, that beſt knew the practice of the near former times, againſt ſuch as were created by Lay-men to Lay-men) to have been the ſtay only of further Infeodations into Lay-hands: that is, every Lay Infeodation that hath force, they ſuppoſe to be of before the time of that Canon: as if the Infeodations from Lay to Lay, there forbidden, were thoſe from which ſuch (for the moſt part) as continue had their original: and therein doubtleſs they are right: and the latter Canoniſts that would apply it to all Infeodations then in *eſſe* are groſly deceived, or wittingly ſtrive to deceive: for in that reſpect the Canon is in no ſtate in force. Neither was it anciently ſo interpreted by the Canoniſts: but in the other, that is, touching new Creations of Feudal Tithes (in prejudice of the Church) by Lay-men to Lay-men it hath been ever admitted, and is in practice both in *France* and *Spain*: and what better interpretation of it can be than the continual practice upon it ſince the making of it? and ſo how can it then be ſuppos'd but that Lay-men before were chiefly the original Authors of them? But ſome *o* Lawyers here to juſtifie their received opinion, bring this argument: Had they not come from the Church, they ſay, then had the Tithes themſelves, which are now poſſeſſed by Lay-men through Infeodations, paid Tithes alſo to the Church by reaſon of the many Canons made for payment out of all yearly increaſe. But this reaſon clearly moves nothing: for the ſelf ſame might have been objected againſt the known beginning of Tithes created and conſecrated to Monaſteries by Lay-men: plainly by the Canons, notwithſtanding ſuch conſecration, the Parochial right to the Evangelical Prieſthood could not be diminiſhed: and by them alſo, as well a Tithe out of the Tithe conſecrated, as out of the Nine parts of the Pariſhioner, might, for ought can be proved againſt it, be demanded by the Pariſh Rector.

But

m Apud *Michov. Goldaſt. Conſtit. Imper. tom. 2. pag. 50.*

n Et vide *cap. 7. §. 3. ad finem.*

o *Bertrand d'Argentre in Conſ. Britan. des Appropriances art. 266. pag. 1110.*

But we ſee clearly both the original of thoſe conſecrations to have been from Lay-men; and alſo that no Tith was or is paid either out of them or out of the reſt of the profits of the nine parts. How then can the other argument touching Infeodations better conclude here? Beſides it inſiſts upon Canons, and would conclude practice from Law: which courſe of proof, uſed by moſt men that write of theſe things, is groſs and ridiculous. For whoever but indifferently obſerves the ſtory of the elder time together with the Laws, ſhall ſoon find that in the Canon Law eſpecially, an argument from *debere fieri* to *factum eſſe*, is ſcarce ſo ſound as that ſo hiſt at among Children, *à poſſe ad eſſe*. The truth ſeems to be, that both in conſecrations, and *Infeodations*, and *Appropriations* of Tithes, there was not any other thing thought on than the name of Tithe, and the right of Tithes generally due to the Church; as if every thing being the Tenth, and by that name as it were ſpecificated, were preſently the Clergies: ſo that whatſoever was by that name given away to meer Lay-men or to Monaſteries by new creation in either Conſecrations or Infeodations, was, it ſeems, taken alwayes to be the ſelf ſame individual Tithe which was ſuppoſed due to the Clergy: which alſo doubtleſs was a cauſe why many Infeodations having original only from Lay-men, were falſly ſuppoſed to have firſt come from the Church: for how eaſy was it that that which out of its own name only of *Decima* was preſently taken as to be due to the Church, ſhould be titled an Eccleſiaſtick right, and then in the paſſages of them which would have had it ſo, be reckoned among ſuch things as the Church had a title to by a former poſſeſſion? and clearly many of the Laity alſo could not but be very inclinable to that opinion: for ſo long as that held, it is likely they reſolved they needed not to pay any more to the Church. For when the Church would not keep the feudal Tithes when it had them (they thought it once had them all) they conceived doubtleſs there was no reaſon why they ſhould pay it any more or other Tithes. Thus perhaps upon divers grounds and cauſes, both the Laity and Clergy deceived themſelves in thinking of the original of theſe Infeodations. But herein that which we have toucht before to be conſidered in Conſecrations and Appropriations is alſo conſiderable: for what could ſuch Infeodations by Lay-men to Lay-men, hurt the right of Tithes which was in the Prieſt-hood? eſpecially if due either *jure divino morali*, or by any poſitive Law ancienter than the Infeodation. But we have not affirmed, that no Infeodations came originally from the Church. Queſtionleſs ſome did: and beſide the examples already noted, you may ſee that of *Rachovius* p who *Eccleſiæ de* Hauchis (in *France*, about the year M.C.XX.) *Decimam laicali uſurpatione tenebat*, as *Ivo's* words are, and he gave the Church to an Abbey of S. *Martins*, and *minutas in præſentiarum Monachis demittendo conceſſit Decimas, & Decimam de Culturis Monachorum ei conceſſit habendam*

p *Ivo Epiſt.* 239. *editione ſecunda. prima deeſt.*

dam post sui decessum. Here it seems he had inheritance in the Tithes. For that other conjecture; that they came first from Impositions made by Princes; I doubt it hath no kind of probability. Indeed it appears that anciently in *Turingia*, the people were driven before their Christianity *q* to pay Tithes to the Kings of *Hungary*, both of their annual increase, and of their children also; and in the government of the King that was declared by *r Samuel*: it is said, *He will take the tenth of your Vineyards and give it to his chief Servants, and to his Officers.* But where shall you find the least mention of Infeodations made of such kind of Tenths? or any touch of them in the complaints of the Clergy against Infeodations? And withal, nothing hath been of less practice than giving away in perpetual right any such revenue due to any Crown or State only by special right of Supreme Majesty. But admit, these had their original this way or any other as you will; unless they can be proved to have been made of the very self same Tithe which is due to the ministring Priesthood (which can never be done; saving only where the Infeodated Tithe was at first received and possessed by the Church by force of the Law of Tithing, not by arbitrary Consecration; in which case also it is considerable whether a Lay-man could be at all capable of the *fructus* only of them, if due by an immediate express Law of God) I see not how they should more prevent Parochial payment to the ministring Priest, than the payment of rents in *s Terrages*, or quantities in Corn, under the name of Tithes to Landlords, should diminish the right of the spiritual Tithe: which way had either such a fifth as was *Pharaohs*, or the tenth spoken of by *Samuel*, to be taken by the King, touched the Tithe due by a superior or former Law, to the Levitical Priesthood? both might well have stood together: might not so, nay, should not so Tithes remain payable from the possessors of the nine parts to the Evangelical Priesthood, notwithstanding Infeodations or any other reservations whatsoever, if they be due by a superior or former Law, especially if due by the Moral Law? and that Law should rather be urged against the Tenants of the Land than against the Pernors of the feudal Tithes. And that common distinction of the Canonists, of *jus percipiendi, & fructus Decimarum* here, is a meer shift, and nothing satisfies, unless they could also teach us how the *fructus* were the very self same alwayes in Infeodations, and that they were derived from a *jus percipiendi* in some Clergy-man. Perhaps too much of these things, which are little or nothing applicable to *England*, where we have scarce any example of a Tithe, that was in its nature feodal, other than in such as were taken from Monasteries by the Statutes of Dissolution, and may still be call'd, as originally, by the name of consecrated or Appropriated Tithes, although now Infeodated. But thereof see the XIII. Chapter.

q Centur. Magdeburg. 8. cap. 8.

r 1 Sam. cap. 8.

s Ejusdem generis, sub Decimæ eciam nomine, proventus Dominis solvuntur in Galliis, in Germania, alibi, videlis Bertran. l'Argentre. Cons. Brit. art. 266. pag. 1109. & Specul. Saxon. lib. 2. artic. 58. §. 2. &c.

To the 5. §. that speaks of Exemptions, for matter of story may be added

added that of the *Hoſpitalars*. After their exemptions given them with the two other Orders; about the year M. C L X. in the Eaſtern parts they *tam Domino t Patriarchæ quam cæteris Eccleſiarum Prælatis multas tam ſuper* Parochiali *jure quam ſuper jure Decimationum ceperunt inferre moleſtias &c.* And received ſuch as were excommunicated for non-payment of them, *De prædiis autem ſuis & univerſis redditibus quocunque jure ad eos devolutis omnino Decimas negabant.* Where by the way note that in this Eaſtern Church (which, after *Hieruſalem* was recovered and made a Kingdom ſubject to Weſtern Princes, ſhould have been faſhioned according to the Canons of the Weſtern Church) Tithes were now appointed payable, although no authentick Law of that old Eaſtern Church, once mentions them. But both in this and other things, the people of that Church were ſtill (notwithſtanding the new Kingdom of *Hieruſalem* poſſeſſed by Europians, and the Popes authority extended to them) moſt u obſtinate and refractary againſt the policy and Inſtitutions offered them either in command or example from the Weſtern.

t *Wil. Tyrius de bello ſacro lib. 18. cap. 3.*

u Quod conſtat ex *Alarini Sanuti Torſelli Secret. Fidelium lib. 2. par. 3. & epiſt. S. & Anonymi de recuperat. Terræ Sanctæ cap. 18.*

After the *Opinions* of the age in the 6. 4. the Laws both *Imperial*, *Provincial*, *and Pontificial* follow in the 7. upon which let it be conſidered, whether a conſecration of Tithes were ſo made by the power and Law of the Church and Common-wealth or both (in ſeveral Territories, according to the Laws extended) that no profanation or detaining them or any part of them, might afterwards be lawful: and the like ſhould be carefully thought on in the 1. 5. of the VII. Chapter, and in the VIII. Chapter which hath the Laws of *England*, for the ſame purpoſe. The *force of the words* of all thoſe Laws; the *authority* that made them; and the *Territories to which they were extended*, are eſpecially to be obſerved by every one that here looks after humane poſitive Law. For many talk and write of that, and tell us here of *jus Eccleſiaſticum* (at leaſt if they fail in their Arguments from *Jus divinum*) but whence that *Jus Eccleſiaſticum* is, & where or when made, they little enough know. For what hath a *Provincial Council* of one Nation to do with another? What hath the *Imperials* of the old *French* Empire to do with *England*? Nay, what hath the Popes Decrees to do here? But becauſe there was a time when their authority was more largely acknowledged; their Decrees that bred much of what now juſtly continues in ſome States (which alſo juſtly now deny their authority) remain moſt obſervable: and we have given them in their places.

Of the VII. Chapter.

IN the laſt C C C C. years, beſide the eſtabliſhment of *Parochial right* in Tithes, and the *various opinions* touching the *immediate Law* whereby they are due; the *Practice* of moſt Chriſtian Nations, as it might be had out of their Laws and Lawyers, is faithfully related.

And to what is there brought, add that of the Law of *France*, whereby the right of the Tithe of all the mines is claimed by *x* the King, as a *droit de Soverainte*, according as it is declared by two edicts publiſhed of *Charles* the IX. and verified alſo by the Parliament of *Paris*: accordingalſo, the old Imperial Law was. But through all here, you may ſee that the *Cuſtomes, Statutes and Common Laws*, eſpecially of *France*, *Italy* and *Spain*, and of moſt other, if not all States, permit not, ſo favourably for the Clergy, an exaction of them, or ſuite to be ſo generally brought for them, as the Laws of *England* did before the Statutes of Diſſolution of Monaſteries, and ſtill do if you exempt thoſe caſes which are founded only upon thoſe Statutes. What Statute or practice is in this Kingdom, that equals the *Carolines* of *Spain*, or the *Philippine* of *France*, which are general Laws for Cuſtomes, (*quatenus* Cuſtomes) *de non Decimando*? And whereas *England* until the Diſſolution, had ſcarce a continuing *Inſtodation* into Lay hands (of which ſee the XIII. Chapter) nor could a Lay-man by the Common Law before the Diſſolution, make any title to Tithes as to Lay inheritances; in other Nations Tithes infeodated have been from above D. almoſt D C. years frequent in uſe, and ſtill continue legally in Lay hands, and are ſubject wholly to *Secular Juriſdiction*, as alſo other Tithes paid to the Church are, whereſoever any ſuch ſuite is commenced for them in their *Spiritual Courts*, as ſtand not with their liberty challenged from their *Secular* or *Common Law*. For every Chriſtian State hath its own *Common Laws*, as this Kingdom hath. And the *Canon Law* every where, in ſuch things as are not meerly ſpiritual, is alwayes governed and limited (as with us) by thoſe *Common* Laws. For by that name are they to be called as they are diſtinguiſht from the *Canon Law*, which hath properly Perſons and Things *ſacred* only and *ſpiritual* for its object in practice, as the *Common Laws* deal with Things and Perſons, as they have reference to a *Common*, not *Sacred*, uſe or ſociety eſtabliſhed in a Common-wealth. Who knows any thing in Holy-Writ, knows the uſe of the word *Common* to be ſo diſtinguiſhed from *Sacred*. Indeed it hath other notions there alſo, and it is otherwiſe underſtood in *jus Commune*, frequently among Canoniſts and Civilians. But theſe nothing at all hurt the convenience of this denomination. For by them, *Jus Commune* is uſed as it is oppoſed to *Municipale* or *Conſuetudinarium*: But here, and in the denomination of the Engliſh Laws, as it is diſtinguiſht from *Sacred* or *Spiritual*: and ſo in this ſenſe the allowance of Cuſtomes, and Parliamentary Statutes (as they ought) fall under the name of *Common Law* with us. Here I doubt not but it will be an obvious objection, that I ſhould rather call the ſupreme and governing Law of every other Chriſtian State (ſaving *England* and *Ireland*) the *Civil Law*; that is the old *Roman Imperial* Law of *Juſtinian*. For ſuch a raigning, but moſt groſs Ignorance, is

x Ordonances de France liv. 2. tom. 2. de Mines & Minieres.

is every where almoſt to be met withal in *England*, that you ſhall have it affirmed for clear that *all other States are governed only by the Civil Law.* Indeed, if they which ſay ſo, underſtood *Civil* for that which is the *Jus Civile* of every ſingular State, it were but the ſame to talk of *Civil* and *Common Law.* For the *Common Law* of *England* alſo is the *Jus Civile Anglorum.* But it is even with one mouth pretended uſually, that the Body of the *Imperials*, read and profeſt in the Univerſities, is the Civil Law, that governs (as they ſay) all other States. But this, howſoever received through lazy Ignorance, is ſo far from Truth, that indeed no Nation in the world is governed by them. For whereſoever they are ſuppoſed to govern (let the brief clearing of ſo common an error, get pardon for the digreſſion) it muſt be taken, that they either govern by their *own original authority*, as they are Imperials, or from their *being received for Laws into other States*, which are not in that firſt way ſubject to them. According to that firſt way, only the *Empire* and perhaps a good part of *Italy*, ſhould be ruled by them. But it is plain, that for the moſt part, the diſpoſition of Inheritances, puniſhing of Crimes, courſe of Proceedings, Dowers, Teſtaments, and ſuch other, which are of greateſt moment under the Legal rule, are even in thoſe States, where, by reaſon of their firſt Inſtitution, they retain a kind of authority, ordered by moſt various Cuſtomes and new Statutes of ſeveral Provinces and Cities, ſo differing from thoſe old Imperials; that the whole face and courſe of them is exceedingly changed in practice. This is plain to every one, that obſerves but the divers Cuſtomes and Ordinances of the States ſubject to the *Empire*; the *Jus Camerale* collected by *Petrus Denaiſius*; the *Nemeſis Karolina*, as it is ſet forth by *Georgius Remus*; and the many publiſhed Deciſions or Reports both of the *Imperial Chamber*, and the *Rota's* of *Rome*, *Naples*, *Pitmont*, *Mantua*, *Genoa*, *Bologna*, and other parts of the Territory of *Italy*. You ſhall find thoſe deciſions, in matters of greateſt moment, moſt commonly grounded on Cuſtomary Law, or later Conſtitutions. So that to affirme, that in theſe places the old Imperials, or that Civil Law (as they call it) governs, is as if (for example) an equal ignorance ſhould tell us, that *Spain* were governed only by *Alfonſo's Partidas*, and *Scotland* only by *Malcolms* Laws or the *Quoniam Attachiamenta*; or that in the time of the old Emperors the *Roman* State had been alwayes governed only by the XII. Tables, or that *England* were legally ruled only by the *Grand Charter*, or by the two Volumes of old Statutes. Like acceſſion and alteration as any of theſe have had, is found in the *Empire* and in *Italy*, where the Imperials have, through the power of the Emperors and [y] Popes, any now continuing authority. Now, for other Chriſtian States, which acknowledge no ſuperior, or any ſubjection to the Empire (except *Portugal*, where the *Roman Civil Law* is authorized, by an [z] Ordinance of State, in caſes which

y Videſis *diſt.* 10. *c.* 12. *& 13. & extrade novi operis nunciatione c.* 1.

z Videſis *Suarez de legib. lib.* 3. *cap.* 8. *§.* 3.

which are not literally comprehended in the Customes or Constitutions of the Kingdom) as *France*, *Spain*, *Scotland*, *Denmark*, *Poland*, the City of *Venice*, and what also in *Germany* hath made it self free from the Empire; what colour is there, that the Imperial Civil Law should govern in them? Indeed in all of them, I think, the reason of it brought into method, is used and applyed commonly to argument, when any of their Customes or Statutes (which are especially in *France* and *Spain* very Voluminous) come in question, because the Practisers studied it in the Universities, and had thence their Degrees given them; which yet they had not, till about some C C C C. years since, neither before about that time was a Doctor or Professor of them known on this side the *Alps*. But as it is Law, it neither binds nor rules with them, no more than the old stories of *Herodotus*, *Thucydides*, *Diodore*, *Polybius*, *Josephus*, *Livie*, *Tacitus*, and the like, or *Cicero* and *Demosthenes*, or *Plato's* Laws, and other of that kind; which are equally sometimes used for reason or example, specially by the Practisers of *France*. And so the old Imperial Civil Law *valet pro ratione* (as *Bertrand d' Argentre*, President of the Parliament of *Rennes* a sayes) *non pro inducto jure*; *& pro ratione* only *quantum Reges Dynastæ*, *& Res publicæ intra potestatis suæ fines valere patiuntur*. And in *France* and *Spain*, Laws *b* were some C C C. years since expressly made, that the *Imperials* should have no force in them. And in *Scotland* it is ordained, that no Laws have force there, but the *Kings Laws* *c* *and Statutes of the Realme*, and that it should be governed by *the common* *d* *Laws of the Realm, and by none other Laws*. Doubtless, Custome hath made some parts of the *Imperials* to be received for Law in all places where they have been studied; as even in *England* also, in Marine causes, and matter of personal Legacies. But is *England* therefore governed by them? It were as good a consequent to conclude so, as to affirm, that any of the other States were, because some petty things are ordered according to some Imperial Text received and established by Custome. But this may seem no fit place to speak more (perhaps not so much) to clear this gross error of such as yet pretend to know more than vulgarly, but can make no difference 'twixt the use of Laws in study or argument (which might equally happen to the Laws of *Utopia*) and the governing authority of them. If any desire to search further here, beside the Authorities cited in the *c* Margin, let him especially see, *I. Baptista à Villalobos* his *Antinomia Juris regni Hispani cum Civilis*, & note especially *la Conference du droit Francois avec le droict Romain*, composed by *Bernard Automne*, and observe both the Volumes of Statutes and Ordinances of *Spain*, *France*, *Scotland*, *Poland*, and of other Countries, together with the various Provincial Customes, especially in *France*, with the arrests, Decisions and *Plaidoies* of that Kingdom, and he shall soon be confirmed in that which a great Civilian of *Italy* is ingenuous enough to tell us, *Hispania*, *Anglia*, *Scotia*,

a *Alcoyant. Brisson.* lib. 22. de Succession. ab intestat.

b Vide *Chopin.* du Domaine Liv. 2. t. 15. §. 5. *Bodin de Repub.* lib. 1. cap. 8. *Surez* ubi supra *Greg. Tholos.* 2. in præmiss. ad collect. Legum Regni

c *Parl.* 3 *Jacob.* 1. cap. 48.

d *Parl.* 6 *Jacob.* 4. cap. 73.

e Vide *extr. tit. de Privilegiis.* 28. *super speculo, & authentic. tit. Ad. Sc. Anton. de Interdictis.* *Chopin* du Domaine, liv. 2. tit. 15. §. 5. *Bodin de Repub.* lib. 1. cap. 8 & ante alios *Suarez de Leg.* lib. 2. c. 8. vide etiam *præfat. ad Statut. Poloniæ, Lithuan.*

tia, Balia, Hibernia, Alemania, Datia, Suetia, Ungaria, Bohemia, Polenia, Bulgaria f *non utuntur legibus seu jure civili, sed specialibus consuetudinibus & statutis*, that is, they are all governed by their own *common Laws*. And that most learned Frier g *Bacon*, of his time; *Omne regnum habet sua jura quibus laici regantur ut jura Angliæ & Franciæ, & ita sit Justitia in aliis regnis per Constitutiones quas habent sicut in Italia per suas.* This was then, and is now true. And the Interpretation of those common Laws in most places, save *England* and *Ireland*, hath of late time been much directed by the reason of the Imperials, and only by the reason of them (not by their authority) and that also in case when they are not opposite at all to the *common Laws*, but seem to agree with the Law of *Nations* or *common reason*. And this use of them, at the furthest, began in its youngest infancy, not C. D. L X. years since. For before that, even from *Justinians* time, they lay wholly out of use: saving only, that some places of them, with the Interpolations of *Alaricus* and his Chancellor *Anian*, together with *Lumbardine* Additions and Interpretations, had their power in some parts of *Italy* and the Empire. But for about D. C. years together, that is, from *Justinian* till *Fredrique Barbarossa*, no Profession was of them in any University, no Doctorship, no other Degree taken in them. But after that time, they grew into a common Profession in this Western world (although by their own authority they are confined to *Rome, Constantinople*, and *Berytus*) and even here in *England* were, about *Henry* the thirds time, often applied to the common Law in discourse and argument, as you may see in *Bracton* his frequent quotations of them. And heretofore some texts of them have been in our Courts cited; not only as at this day sometimes is done (when the words only of some of the *regulæ juris* is brought into an argument) but the Title and Law, after the Civilians fashion, hath been remember'd at the Bar, and so afterward expresst in the Report, as I have seen in an example or two in the Mss. years of *Edward* the *h* second. Yet, notwithstanding that, it is clear, that *England* was never governed by the Civil (or Imperial) Law, as it was also affirm'd by the upper House of Parliament in 11 *Rich.* 2. where the King and Lords protested also, that their meaning was, it never should be governed by it.

f *Hieronym. Gigas tract. de Crim. Lese Majest. lib. 2. quæst. 23. §. 18 & 19.*

g *In Compend. Theolog.* citatur *in Norm. ad Fortesc. pag. 43.*

h *In Biblioth. Ir's. Temp's.*

Of the VIII. Chapter.

OUt of this fulness of *Laws* that were made for Tithes in *England*, let it be considered (by such as enquire here *de jure*) what *interest* was of right setled in the Clergy by them (howsoever they were little obeyed) And by what *Authority* made (we have carefully added still what might help to a judgement in that also) and how *extensive*, in regard of *Persons* and *Territory*, they were, and some such other; and how far the *Tithes* might be, after such Laws, *detained* or

made subject to Customes, or *possessed as things of common use*. The Laws of before, as well as of after the *Norman Conquest* (as it is vulgarly called) are here gathered, and are perhaps equally observable, as the rest, in the consequent of a *general consecration of Tithes* to the Church in *England*. For neither were the Laws formerly made, abolisht by that *Conquest*, although, by Law of *i* War, regularly all Rights and Laws of the place conquered, be wholly subject to the *Conquerors* will. For in this of the *Norman*, not only the *Conquerors* will was not declared, that the former Laws should be abrogated (and until such declaration, Laws remain in force, by the opinion of *k* some, in all Conquests of Christians against Christians) but also the ancient and former Laws of the Kingdome were confirmed by him. For in his fourth year, by the advice of his Baronage, he summoned to *London*, *Omnes Nobiles sapientes & lege suâ eruditos, ut eorum leges & consuetudines audiret*, as the words are of the Book of *Lichfield*, and afterward confirmed them, as is further also related in *l Roger* of *Hoveden*. Those *Lege suâ eruditi* were common Lawyers of that time, as *Godric* and *Alfwin* were then also, who are spoken of in the Book of m *Abingdon*, to be *Legibus patriæ optime instituti, quibus tanta secularium facundia & præteritorum memoria eventorum inerat, ut cæteri circumquaq; facilè eorum sententiam, ratam fuisse, quam edocerent, approbarent*. And these two, and divers other Common Lawyers then lived in the Abbey of *Abingdon*, *Quorum collationi nemo sapiens* (says the Author) *refragabatur, quibus rem Ecclesiæ publicam tuentibus ejus oblocutores elinguis fiebant*: You must know, that in those days, every Monk here in *England*, that would, might remain so secular, that he might get money for himself, purchase, or receive by descent to his own use. And therefore it was fit enough for practising Lawyers to live in Monasteries. But what had those *præteritorum memoria eventorum* (that is, Reports and adjudged Cases of the *Saxon* times) availed in their skill, if the former Laws had not continued? More obvious Testimonies to this purpose are had out of n *Gervase* of *Tilbury*, *Ingulphus*, and others, and we here omit them. But also, indeed, it was not to be reputed a *Conquest*, or an Acquisition by right of War which might have destroyed the former Laws) so much as a violent recovering of the Kingdome out of the hands of Rebels, which withstood the Dukes pretence of a lawful Title, claimed by the Confessors adoption, or designation of him for his Successor; his nearness of blood on the mothers side not a little also aiding such a pretence to a Crown. For the Confessors mother *Emme*, was sister to *Richard* the second, Duke of *Normandy*, to whom *William* was Grand-child and Heir. But these were only specious Titles and perhaps examined curiously, neither of them were at that time enough. And howsoever his conscience so moved him at his death, that he profest he had got * *England* only by Blood and the Sword, yet also

i Vide *Quintilian lib. 5. Institution. cap. 10. Atheric. Gentil. de jure belli lib. 3. cap. 5. & Hotoman. Illust. quæst. 5.*

k Calvin's *case*, *fol. 17. b.*

l In Hen. 2. pag. 347.

m *Ms. lib. 2. pag. 39 & 36. in Bibl. Cotton.*

n Videsis *Coke Præfat. ad Relat. 3. & 8. & si placet Nov. ad Horæsc. pag. 7. & 8.*

* *Historia Codomensis.*

also by express declaration in some of his Patents, he before pretended his right from the Confessors gift. p *In ore gladii*, saith he, *Regnum adeptus sum Anglorum, devicto Haroldo Rege, cum suis complicibus, qui mihi regnum cum providentia Dei destinatum & beneficio concessionis Domini & cognati mei gloriosi Regis Edwardi concessum conati sunt auferre, &c.* And the stories commonly tell us that the Confessor *successionem Angliæ ei dedit*. And although *Harold* also pretended a Devise of the Kingdom to himself made by the Confessor *in extremis*, and urged also that the custom of *England* had been from the time of *Augustines* coming hither, q *Donationem quam in ultimo fine quis fecerit, eam ratam haberi*; and that the former gift to the *Norman* and his own Oath for establishment of it were not of force, because they were made r *absq; generali Senatus & Populi conventu & edicto*; yet for his own part he was driven to put all upon the fortune of the field, and so lost it: and the *Norman* with his sword and pretence of the sufficiency and precedence of the gift made to himself, got the Crown as if he had been a lawful Successor to the Confessor, and not a universal Conqueror. All this is plain out of the stories, and justfied infallibly by that of the Titles of many common persons made to their possessions in *England* after his Kingdom setled, upon the possession of themselves or their Ancestors in time of the *Saxon* Kings, especially of the Confessor: but this was always in case where they by whose possession the title was made, had not incurr'd forfeiture by Rebellion: many such Titles are clearly allow'd in the book of *Domesday*, written in the Conquerors time: one specially is noted by the most learned *Camden* in his *Norfolk*: that, as I remember, is toucht in *Domesday* also, but enough others are dispersed there which agree with it. How could such Titles have held if he had made an absolute conquest of *England*, wherein a universal acquisition of all had been to the Conqueror, and no title could have been deriv'd but only from or under him? More might be brought to clear this; but we add here only the judicious assertion of a great s Lawyer of *Edward* the thirds time. *Le Conquerour* (saith he) *ne vient pas pur ouster eux que avoient droiturell possession, mes de ouster eux que de lour tort avoient occupie ascun terre en desheritance del Roy & son Corone.* It was spoken upon an Objection made in a *Quo warranto*, against the Abbot of *Peterborough*, touching a Charter of King *Edgar*, which the Kings Counsel would have had void, because, by the Conquest, all Franchises, they said, were devolv'd to the Crown. But, by the way, for that of his nearness of blood, which could not but aid his other pretended Title; let it not seem meerly vain in regard of his being a Bastard. There was good pretence for the help of that Defect also. For, although the Laws of this Kingdom, and, I think, of all other civil States at this day, exclude Bastards (without a subsequent legitimation) from inheritance; yet by the old Laws us'd by his Ancestors and Countrey-men, that is, by those of *Norway*, a Princes son gotten t on a Concubine bond

p *Chart. Eccles. Westm. in Inspex. pars 7. 1 Ed. 4. membr. 26.* & vide *Camden. pag. 104.*

q *Mt.* sive Autor *Guil. Pictav.* sive quis alius sit. *in bibl. Cotton.*

r *Malmesb. lib. 3. de gest. Regum, pag. 56. a. alii in Wil. 1.* & videsis *Matth. Paris in Hen. 3. pag. 1257.* edit. Londin.

s Sharde *in Cas. in Trin. Temp. Ed. 3. fol. 143. b.*

t Vide *Roger. de Hove. in Hen. 1. fol. 325. & 347.*

bond or free, was equally inheritable as any other born in Wedlock; which was, I believe, no small reason why he stood at first so much for the Laws of *Norway* to have been generally receiv'd in this Kingdome: and some Stories also which make mention of Duke *Robert* his getting *William* on that *Arlet* or *Arlec* (as she is sometimes written) say that she was to him a good while *vice uxoris*. So *Henry* of u *Knighton* Abbot of *Leicester*: *Transiens*, saith he, *Robertus aliquando per Phaleriam urbem Normanniæ vidit puellam* Arlec *nomine Pelleparii filiam inter exteras in chorea tripudiantem: nocte sequente illam sibi conjunxit, quam vice uxoris aliquandiù tenens Willielmum ex ea generavit*. And he tells us also the common tale of tearing her smock. If she were so his Concubine or *Viceconjux* (between whom and a wife even the old x Imperials make no other difference but honour and dignity; and by them also some kind of inheritance is allow'd to y such Bastards as are *Naturales liberi*, that is gotten on Concubines;) it was much more reasonable that her son should be reputed as legitimate, than that the son of every single woman bond or free, whether Concubine or no, should be so, as those Laws of *Norway* allow: and when he had inherited his Dukedome, he made, doubtless, no question but that his blood was as good in regard of all other inheritances that might by any colour be deriv'd through it: and therefore *William* of *Malmesbury* well stiles him *proximè consanguineus* also to the Confessor, as he was indeed on the Mothers side: and those z of the posterity of *Edward* son to *Ironside*, were then so excluded or neglected that their nearness on the Fathers side could not prevent him: you may see the common stories of them. But whereas that excellent a Lawyer *Littleton* says, that *William* the Conqueror *was called a Bastard because he was born before marriage had between his Father and Mother, and that after he was born they were married* (which indeed by the b Imperials and by the general Law of c *France* would have made him wholly legitimate) I doubt he had but little or no ground to justifie it. Had he been so legitimate, it is not likely he should have been stiled so commonly and anciently *Bastardus*, which name even in his d own Chatters he sometimes used with *cognomento*, as also the Bastards of the old *Philip* Duke of *Burgundy* were wont to do; although of later time it be reputed as a name of dishonour; and the *actio injuriarum*, or an action upon the case lies where ever it be falsly objected, as some will e have it. But these things prove enough that this *William* seised the Crown of *England*, not as conquer'd, but by pretence of gift or adoption, aided and confirm'd by nearness of blood; and so the *Saxon* Laws formerly in force could not but continue: and such of them as are now abrogated, were not all abrogated by his Conquest, but either by the Parliaments and Ordinances of his time and of his successors, or else by non-usage or contrary custom.

The *Laws* that are here gather'd are for the most part *Latin*, *Saxon*, or

u In Bibl. Cotton.

x ff. de Legat. 3. L. Item Legato 49. §. 4.

y Authent. 89. c. 12. discretis igitur, &c.

x Videsis Malmesb. de gest. Reg. lib. 2. fol. 52.

a 18 Ed. 4. fol. 30. a.

b C. tit. de Nat. lib. c. cum quis 10. &c.

c Videsis Bacquet de Domaine du Fr. traict. du Bastardise ch. 9. &c.

d Apud Camden in Richmondia.

e Videsis Pont. Heuterum de liberis Natural. cap. 12.

or *French*. The *Saxon* is interpreted by the old *Latin*. But the *Latin* and *French* are left only in their own words. I presume, scarce any man that with the least care studies the subject, will confess he understands not the context of such *Latin*. And the *French* I translated not, specially because it is but the same which is in our old year-Books and Statutes, and may indeed even as soon be understood by any fit Reader of the rest, as I could have translated it: and I think the judicious Searcher desires rather the original tongue whatever it be, than a translation. Therefore I suppose (if he have not studied the Laws, or otherwise know it) he will rather take some minutes pains than blame me for not turning it: and howsoever to divers peevish Ignorants, out of their dainty stomachs, and a pretence of nothing but the more polished literature, it may here seem barbarous and distastful; the truth is, it was the plain and genuine *French* of elder time spoken in the *English* Court, and now loathed only by such as know not at all how to judge of it, nor understand the original whence it came to be and remain so with us. I remember that old *f* Father *Gregory* of *Neocæsarea* (whom they call *Thaumaturgus*) speaking of the old Imperials of *Rome*, as they were in their *Latin* (which both then was and now is a most accurate and polite phrase) commends them for that they were indeed in an admirable and stately language, and in such a one as fitted an Imperial greatness, φορτικὴ δὲ ἐμοὶ, saith he, *Yet to me it is crabbed and troublesome*: and so he says he was ever driven to think of it: yet in his youth he was put to study them at *Berytus*, and was taught *Latin* to that purpose. If to so great a man that curious language could seem no pleasanter when he studied it, it is the less wonder that the Law *French* (which doth as truly and fully deliver the matter in our Laws, as the *Latin* in the Imperials; though indeed far from polite expression) should be so contemptible among the many petty Ignorants which usually despise whatever their lazy course of studies hath not furnisht them withal, and most indiscreetly censure things only as they see them present, without regard to the cause or original of them, which made them that they were first inevitable and afterward remained not without exceeding difficulty (if at all) alterable. But this by the way.

f In Panegyric. ad Origenem.

Of the IX. X. XI. XII. XIII. and XIV. Chapters.

UPon the discovery of the *Original of our Parishes*, of the ancient and late *Practice of Tithing* here, of *Arbitrary Consecrations* of Tithes made by the Laity, of the first *settling of Parochial right* to Tithes in *England*, of *Appropriations*, of *Exemptions*, of *Infeodations*, and the ancient *Jurisdiction* of Tithes (all which take up these VI. Chapters) no fit Reader can be so blind as not to see necessary

and new assertions and consequences to be made out of them in every inquiry that tends to a full knowledge of the true and original nature of Tithes, as they are possest or detained by either Lay or Clergy-man, in respect only of any humane positive Law or civil Title. But we should here briefly admonish somewhat of our *appropriated* or *consecrated Tithes*, and conclude all with a touch of the *Canon Laws ancient autority*, which in practice made such alteration in *England*, as is shewed, about the year M. C C.

To the matter of *Consecrations* and *Appropriations* here, apply what is admonisht touching them in the *Review* of the V I. Chapter: and let every man first carefully look that he know the course of old *Appropriations*, and the way how the *Monasteries* and *Colledges* came by them, before he conclude rashly of the Tithes that are possessed through them. *Tithes consecrated* and *appropriated* were purposely dedicate to the Almighty and his Service, although not without mixture of superstition, that we are sure of. But although a Tithe generally were due to the Evangelical Priest *jure divino* (without any civil Title) yet we are nothing sure that all or the most *appropriated* or *consecrated* Tithes are the self same Tithes so due: which yet is suppos'd as clear, and never further thought on by such as have troubled themselves and their Readers with arguments for the Church, in the point of Appropriations. Let him that shall now write of them, see here the way how to consider them. And let him that detains them (and believes them not due *jure divino*) think of the ancient *Dedications* of them made to holy uses: and however they were abus'd to superstition, as the other large Indowments of the Church, before the Reformation; yet follows it not, without further consideration, that therefore, although so dedicated, they might be prophan'd to common uses and Lay hands. Consult herein with Divines. But I doubt not but that every good man wishes that at our dissolution of Monasteries both the Lands and Impropriated Tithes and Churches possessed by them (that is, things sacred to the Service of God, although abus'd by such as had them) had been bestowed rather for the advancement of the Church to a better maintenance of the labouring and deserving Ministery, to the fostering of good Arts, relief of the Poor, and other such good uses as might retain in them, for the benefit of the Church or Common-wealth, a Character of the wishes of those who first with devotion dedicated them (as in some other Countries *g* upon the Reformation was religiously done) than conferr'd with such a prodigal dispensation, as it happen'd, on those who stood ready to *devour what was sanctified*, and have (in no small number since found such inheritances thence deriv'd to them, but as *Seius* his Horse or the Gold of *Tholouse*. But I abstain from censure, and add here by the way, a complaint made to the Parliament not long after the Dissolution, touching the abuse that followed in the Church through Lay

g Christoph. Bindor. de bonis Ecclesiæ in duces. Wittenberg. pag. 94. &c.

mens

mens possessing of Appropriated Churches and Tithes. It deserves to be seriously thought on by every Layman that now enjoys any of them, especially where Divine service is not carefully provided for. *Ye that the Lords and Burgesses of Parlament house* (so are the * words of it) *I require of you in the Name of my poor Brethren that are* Inglish *men and members of Christes body, that ye consider well (as ye will answer before the face of Almighty God in the day of judgement) this abuse and see it amended. whanas Antichrist of Rome durst openly without any viser walk up and down thorow out England, he had so great favor ther, and his children had such crafty wits (for the children of this world are wiser in their generation than the children of light) that they had not only almost gotten all the best lands of* England *into ther hands, but also the moost part of all the best* Benefices *both of* Parsonages *and* Vicarages, *which were for the most part all* impropred *to them* (the Impropriations held by them were much more than one third of all the Parish Churches in England divided into three parts) *and whan they had the gifts of any* not impropred, *they gave them unto their friends, of the which always some were learn'd: for the Monks found of their friends children at scole. And though they were not learn'd, yet they kept hospitality, and helped their poor friendes. And if the* Parsonage *were* impropred, *the Monks were bound to deale* Almesse *to the pore, and to keepe hospitality, as the writings of the gifts of such Parsonages and Lands do plainly declare in these words,* in puram eleemosynam. *And as touching the* Almesse *that they delt, and the* Hospitality *that they kept, every man knoweth that many thousands were well received of them, and might have been better, if they had not had so many grete mens Horse to fede, and had not bene overcharged with such idle Gentlemen, as were never out of the Abbaies. And if they had any* Vicarage *in their hands, they set in sometime some sufficient Vicar (though it were but seldome) to Preach and to Teach. But now that all the* Abbaies *with their lands, goods, and* impropried Parsonages, *be in* Temporal mens *hands; I do not here tell that one* halpeny worth *of* Almes *or any other profit cometh unto the people of those Parishes. Your pretence of putting down* Abbys, *was to amend that was amiss in them. It was farre amisse, that a great part of the lands of the Abbeys (which were given to bring up learned men that might be Preachers, to keepe Hospitality, and to give Almesse to the poore) should be spent upon a few superstitious Monks, which gave not* X L. *pound in Almesse, when they should have given* C C. *It was amisse, that the* Monks *should have* Parsonages *in their hands, and deale but the* X X. *part thereof to the Poore, and preached but ones in a yeer to them that paid the* Tithes *of the* Parsonages. *It was amisse, that they scarcely among* X X. *set not one sufficient Vicar to preach for the* Tithes *that they received. But see now how it that was amisse is amended, for all the godly pretense. It is amended even as the Devil amended his Dames legge (as it is in the Proverbe) when he should have set it right, he brake it quite in pieces. The* Monks *gave to little Almesse, and set unable persons many times*

*Ex libello dicto, *The complaint of* Roderick Mors *sometime a Gray Frier, &c.* olim impress. *Genevæ.*

times in their Benefices. But now, where XX. *pound was given yerly to the Poor, in more than in* C. *places in* England *is not one meals meat given. This is a* * *great amendment: where they had always one or other Vicar, that either preached, or hired some to preach, now is there no Vicar at all, but the* Fermer *is* Vicar *and* Parson *altogether, and only an old cast-away Monk or Frere, which can scarcely say his Mattins, is hired for* XX. *or* XXX. *shillings, meat and drink, yea in some places for meat and drink alone, without any wages. I know, and not I alone, but* XX.M. *moe, know more than* D. *Vicarages and Parsonages thus well and Godlily served, after the new Gospel of* England. And so the Author goes on with sharp admonitions to the Lay-men, that fed themselves fat with the Tithes of such Churches, while the souls of the Parishioners suffer'd great famine for want of a fit Pastor; that is, for want of fit maintenance for him: for without that he is scarce to be hoped for.

* *Sain.*

But we conclude with that of the *Canon Laws* getting such force, *and* making such *alteration in matter of Tithes* about the year M.CC. when through it, *Parochial payment* became first to be perform'd here, or elsewhere generally, and as of common right (where other titles prevented it not) and through it only, not through the ancienter secular Laws made her for Tithes. For the suits for them in the Spiritual Courts either were all grounded upon the Canons; or the common right of Tithes was now supposed in the Libell as a known duty to the Clergy, without secular Law. It may soon be apprehended, that it was much less difficult about that time, than any other, for the Popes and their Canon Laws to gain more obedience among subjects, and execute more autority over Lay-possessions, when also they so easily usurpt power over supreme Princes, which yielded to them. For no time ever was, wherein any of them more insolently bare themselves in the *Empire*, never near so insolently in *England*, as in the continuing times next before and near about this change. And to all States the Church of *Rome* now grew most formidable. Remember but the Excommunication and Correction suffer'd by *Frederique Barbarossa*, *Henry* the sixth, and other Princes of the *Empire*, and by our *Henry* the second, and King *John*: the stories of them are obvious. And our *Richard* the first, between those two, to gratifie the Clergy here for their exceeding liberality, in contribution to his Ransome from Captivity, with great favour gave them an indulgent Charter *b* of their Liberties; which being joyn'd with those other prone and yielding Admissions of the Ecclesiastique Government over the Crown (so were the times) doubtless gave no small authority to the *Exercise of the Canon Law* in those things, which before about that time were diversly otherwise. Neither was that part of the *Canon Law*, which would have a *General and Parochial payment of Tithes*, not only second to any, in regard of the Clergy's profit; but also none other, doubtless, was so great as it, in gaining the Clergy a direct

b *Anno 1 Iohannis.* 3 *Epist. Decretal.* tit. 2. *pag.* 242. *edit. Colon.*

Direct and certain Revenue. Therefore it was not without reason on their side; at such time as they saw the Power of *Rome*, that is, the authority of Decretals and of the Canons grow most dreadful to Prince and subject, that they should urge this on to a continuing practice, & that with execution of the reigning Censures of the Church. Hence have the Canons, in this point, hitherto here continued, and have been and are binding Ecclesiastique Laws, saving wherein the later express Laws of the Kingdome cross them. And this out of the quality of the time, with regard to the practised insolency of the *Pope* and his *Clergy*, in putting their *Canons* and *Decretals* in execution, that receiv'd general practice of Parochial payment (near almost according to the Canons) and other such alteration, that suddenly varied from former use, and from the liberty of the Lay subject, must have its original; not from any want of the *Canons of the Church of Rome*, as if they had not been here at all had or read, before about that time. For doubtless, the Canon Laws were here used and practised as far forth as the Clergy could make the Laity subject to them. For, about D. years before this alteration, good testimony is of the publique and solemn receiving of the *Codex Canonum vetus Ecclesiæ Romanæ* (mentioned by old Popes *i* for the eldest and most authentique Body of the Canon Law of the Western Church) and that in a National Synod held in D. C. L X X. under *Theodore* and *Wilfrid* Archbishops; where, with one voice, the Clergy answered *Theodore*, *Optime* k *omnibus placet quæcunque definierunt Sanctorum Canones patrum nos quoque omnes alacri animo libentissimè servare: quibus statim* (says *Theodore*) *protuli eundem librum Canonum, &c.* But at that time there was no Law for Tithes, or mention of them in the known Canon Law of the Church of *Rome*, or in any other Provincial Canons, saving in that of the second Synod of *Mascon*. Afterward also we find the *Leges Episcopales* l, which were served by *William* the first from the *Hundred*, and confined to the *Bishops Consistory*; that we may omit the National or Provincial Constitutions of this Kingdome, made in those elder times, according to the old Canons of the Church of *Rome*. And X. years before *Gratians* Decree written, it is certain, that the Canons of the Church, generally by the name of *Canones* and *Canonum Decreta* (for divers collections were of them, and some also confirm'd by Papal authority, beside the *Codex Vetus*, before that of *Gratian*) were familiarly talkt of and urged in that great m Controversie in the Synod of *Winchester*, in the fourth year of King *Stephen*, touching the Castles of *Newark*, *Salisbury*, and the *Vies*; where the King denied utterly, *Censuram Canonum pati*; that is, to have it determined by them, whether, or no, the two Bishops, *Roger* of *Salisbury*, and *Alexander* of *Lincolne*, might lawfully keep their Castles that they had fortified. But while the rest of the Bishops stood so much upon their

i *Dist.* 19. *c.* 1. *Si Romanorum. Dist.* 20. *c. de Libellis.*

k *Beda hist. Eccles. lib.* 4. *cap.* 5.

l *Vide Cap.* 14. §. 1.

m *G. Malmesb. hist. Novell. lib.* 2. *pag.* 103. *b.*

Canons, and even in the face of Majesty profest a rebellion, the King and the Lay subjects, it seems, grew so exasperated against them, that by publique command, for preservation of the liberty of the Crown and Laity, they were forbidden to be of any more use in the Kingdom. For so perhaps is that to be understood (as we have elsewhere a noted) in *John* of *Chartres*, o where he says, that *Tempore Regis Stephani à regno jussæ sunt Leges Romanæ quas in Britanniam domus Venerabilis Patris Theobaldi Britanniarum Primatis asseverat. Ne quis etiam libros retineret, edicto Regio prohibitum est.* What he calls *Leges Romanæ*, the most learned Frier *Bacon* mentioning the same story, stiles *Leges Italiæ*, and takes them for the *Roman Imperials*, and not for the *Canon Law*. I confess, I see not enough clearly here to judge (upon the words of *John* of *Chartres*) whether it were the *Canons* or the *Imperials*: on the one side, If we say he meant that *Theobald* or his Clergy, brought the *Roman Canon Law*; it might so seem as if it had not been here before in the hands of the Clergy, nor partly practised by them. Which doubtless is otherwise. If on the other side we understand the *Imperials* (Copies of which indeed might well be at that very time brought as a novelty hither; for they were then newly found; and plainly in *Henry* the seconds time, they were here in the hands of the more curious Scholars, as you may see by *John* of *Chartres* his citing of them) how then is that true which he presently after says of the encreasing power and force of those *Leges Romanæ*? *Sed*, saith he, *Deo faciente eo magis virtus legis invaluit quo eam amplius nitebatur impietas infirmare.* What force or power at all had the Imperial here afterward? where is any sign of it? But the objection against that which might prove them not to have been the *Canon Laws*, may not difficultly perhaps be answered. It is true that the Canons of *Rome* were here before, and read, and partly practised in the Church. But divers Collections were of them about this age of King *Stephen*, and perhaps some later and larger Collection might be brought hither by Archbishop *Theobald*, or some of his Clergy, which are understood, I think, in that *Domus Venerabilis Patris Theobaldi*. He himself perhaps might bring *Ivo*'s Decree (when he came from *Rome* in the 3. of King *Stephen*) and endeavour the strict practice of it here; which the King and the Lay subject had reason enough to dislike) or some of his Clergy might perhaps afterward bring in *Gratians* Decree that was both compil'd by *Gratian* and confirm'd by Pope *Eugenius* the 3. about ten years before *Theobalds* death, that is about 16. of King *Stephen*. And this way those words of *Legis virtus invaluit*, may have their truth. For however that opposition against the Canon Law were, it is most certain that this first part of the body of it (the Decree) was presently upon the first publication of it in use in *England*, and familiarly cited by such Divines as talkt of what had reference to it, witness especially p *Giraldus Cambrensis* in his Epistles: and the practice of the Canon Law here for the time

n *Jen. Ang. lib.* 2. § 43. vide, si placet, *Nov. ad Fortisc. pag.* 43. & 44.

o *De nugis Curialium, lib.* 8. *cap.* 21.

p *In Symbol. elect. Mo. in* Bibl. Cot.

time of *Henry* the ſecond, is ſeen in the Epiſtles of that *John* of *Chartres*; which yet remain and are, I think, the ancienteſt examples of proceedings in our ſpiritual Courts. But notwithſtanding that firſt part of the body of the *Canon Law*, which expreſly commanded Tithes to be generally paid, were here ſoon receiv'd among the Clergy; yet about L. years after that, the former courſe of *Arbitrary Conſecrations* of them continued: and both that and the reſt of thoſe courſes in diſpoſition of Church-revenues which ſo differ from the Canons, and from the practice of this day, was not fully alter'd till ſome *Decretals* came hither with more powerful and dreadful authority (as the times were) of ſome of the following Popes, eſpecially of *Alexander* the third, and *Innocent* the third, which two alone I think, ſent as many commanding *Decretals* into every Province as all their Predeceſſors had before done; and eſpecially into *England*, as is already ſhew'd, they ſent divers (only for the matter of Tithes) which were all firſt of Papal autority for the particular ends for which they were ſent, and ſo were obey'd as *Canon Law*, although none of them became parts of the *general Canon Law* until *Gregory* the ninth put ſome of them into his Decretals authorized by him in the year M. CC. XXX. about which time perhaps and divers years before, the *Canon Law of Rome* was not only read here privately among the Clergy, but profeſſed alſo in Schools appropried to it: ſo I gueſs is that cloſe Writ of 19 *Hen.* 3. to be underſtood, which prohibited the holding of *Scholæ Legum* in *London*: it was directed to the Mayor and Sheriffs commanding them, q. *Quod per totam Civitatem* London *clamari faciant & firmiter prohiberi ne aliquis Scholas regens de Legibus in eadem Civitate de cætero ibidem Leges doceat. Et ſi aliquis ibidem fuerit hujuſmodi Scholas regens, ipſum ſine dilatione ceſſare faciat T. Rege apud Baſing.* XI *die Decembris.* This was five years after the Decretals publiſhed: and it ſeems moſt probable, that theſe *Leges* were *Canon Laws*, perhaps mixt (as uſually they were) in the profeſſion alſo with the Imperials (for both of them were, it r ſeems, ſtudied here under *Henry* the third by the Clergy more than any other part of learning) and therefore were forbidden as being both, in regard of their own authority, againſt the ſupreme Majeſty and independency of the Crown of *England*.

q *Claus.* 19 *Hen.* 3. *membr.* 22.

r Videſis 39 *Hen.* 3. apud *Matth. Paris Hiſt. majore a. d.* 1255.

The end of the Review.

The ancient Records *and other* Manuſcripts,

Uſed in this Hiſtory *of* Tithes, *with references to the places where they are cited, and to the* Offices *and* Libraries *wherein they remain: they are ſpecially therefore here collected that the* more learned Reader (*being perhaps, out of his own Studies, furniſhed with the moſt or all of what we have out of* printed Teſtimonies) *may at one view, without pains of reading the whole, be directed to all of them. I preſum'd he might wiſh for ſuch a collection; which was neither difficult for me to make; nor will it be hard for any man that hereafter* Tranſcribes *or* Prints *it, to alter the numbers of the* Pages *according to his tranſcribed or printed Copy: the Margine will eaſily help him.*

Records in the Tower of *Tondon.*

Of the time of
- King *Ethelbert*, p. 252.
- *William* the firſt, pag. 351. 413. 483.
- *William* the 2. p. 416.
- *Henry* the firſt, p. 325. 352. 353. 417.
- *Henry* the 2. p. 350. 351. 445.
- King *John*, chap. 2. §. 8. & p. 352. 353. 387. 445.
- *Henry* the 3. chap. 6. §. 2. & pag. 194. 265. 267. 284. 286. 352. 358. 391. 423. 435. 436. 437. 444. 445. 446. 491.

Of the time of
- *Edward* the firſt, pag. 364. 435. 438.
- *Edward* the 2. p. 368. 436.
- *Edward* the 3. p. 106. 176. 237. 238. 239. 240. 241. 436. 441. 442. 443.
- *Henry* the 4. p. 242. 373.
- *Henry* the 5. p. 369.

With theſe I reckon alſo that book of *Parliaments* (for the moſt part, of the time of *Ed.* 1.) remaining in the hands of that courteous and worthy Gentleman Mr. *J. Borough*, it is cited, pag. 285. 286. 366. 367.

In

In the Office of *Receipt* of the *Exchequer.*

The Book of *Domesday*, p. 203. 216. 279. 280. 281. 361. 405. 483.

Records of the time of
- *Richard* the first, p. 374. 381. 386.
- King *John*, p. 382. 383. 384. 439. 440.
- *Edward* the first, p. 366. 367. 389. 390. 332.
- *Edward* the second, p. 448.
- *Edward* the third, p. 363.

In the Office of the Kings *Remembrancer.*

The *Red Book* of the Exchequer. pag. 227.

In the *Princes* Library.

King *Knouts* Laws (pag. 223. 224.) it is a most ancient and perfect Copy of them in *Latin.*

In the publique Library of *Oxford.*

Joannes Anglicus his *Historia Autea.* pag. 275.

The Legend of the Lord and Parson of *Cometon*, at the end of *Johannes de Grandisono* his life of *Thomas Becket.* ibid.

An Epistle of the University (touching Personal Tithes) to the Convocation of the Clergy. p. 171.

Thomas Elmham Prior of *Lenton* his Chronicle of *Henry* the 5. Chap. 1. §. 4.

In the *Inner Temple Library.*

The years of *Edward* the second at large. pag. 481.

In the Library at *Pauls.*

Ivo his *Decreta.* Chap. 5. §. 5. twice.

Chartularies or Leiger-books of the

- Church of *Utrecht*, chap. 5. §. 2. in marg. & chap. 6. §. 2.
- Abbey of *Abingdon*, chap. 5. §. 3. & p. 208. 281. 298. 299. &c. to 306. 419. 420. 482.
- Church of *Worcester*, chap. 5. §. 3.
- Church of *Landaff*, or *Tilt*, p. 250. in *margine*.
- Priory of *Giseburn*, p. 272. 308. 441.
- Church of *Rochester*, p. 282. 310. &c. to 318.
- Abbey of *Reding*, p. 283. 284. 319.
- Abbey of *Osney*, pag. 306. 307. 308. 357. 397. 398. 399. 400. 401. 402.
- Nunnery of *Clerkenwell*, p. 319.
- Nunnery of *Chartres*, p. 363.
- Abbey of S. *Albons*, p. 324. 325. to 329. 447.
- Priory of *Bosgrave*, p. 330. to 334. 397.
- Priory of S. *Needs*, p. 334. 378.
- Hospital of S. *Leonards*, p. 336. 337.
- Priory of *Merton*, p. 440.

A most ancient copy of the Synod of 742. held under *Carloman*, bound with a Ms. *Ansegisus*, chap. 5. §. 3.

Fridegodus, pag. 271. And a Bull of *Lucius* the second, in the same Volume, pag. 97.

Bernardus Morlanensis. p. 118.

Ivo's Epistles, p. 125.

A Volume of *Decretal Epistles*, wherein are the most of those in *Appendix Concilii Lateranensis*, p. 145. & 161.

Henry Knighton Abbot of *Leicester* his History, p. 147. 484.

Excerptiones Ecberti *Arch. Eboracensis*, p. 196. 197.

Nicholas of *Gloucester*, p. 204. and a French fragment in the same Volume, p. 205.

Robert of *Gloucester*, p. 206.

John Pike, p. 206.

Saxon Chronicles of { *Peterborough* *Abindon* *Canterbury* } pag. 206.

Statuta Synodorum, p. 210. 211. 212. 263. 264.

Saxon Laws in *Saxon*, p. 213. 219. 222. And an old Exhortation in one of the Volumes of them in 8. *chap.* 5. §. 6.

Historia Jornallensis, written by *John Brampton*, pag. 213. 214. 215. 219. 222. 223.

Saxon Laws in *Latin*, p. 214.

Bede in *Saxon*, p. 253. 259. 271. 276.

Fleta, p. 216. 428.

The story of the Church of *Landaff*, pag. 250. and a Council of the year 810. (used in pag. 261.

261. & 277.) and some Decrees of *Odo* Archbishop of *Cantnbury* are bound up with it, cited pag 217. And in the same Volume the life of S. *Cadoc.* pag. 276.

A Council under King *Ethelred*, p. 220. 221. 222.

A Book full of late collections out of some *Saxon* and *Latine* Monuments of this Kingdome, in a large 4. p. 225. 226. 227.

Lanfranks Epistles, p 227.

Regularis Concordia Monachorum, &c. p. 263.

Fulcardus Doroberneusis, p. 272. and in the same Volume a Bull of *Gregory* the ninth, and a Charter of *Athelstan*, cited pag. 271. & 272. and a Writ to the Sheriff of *York* about Tithes, p. 417.

Turgotus Prior *Dunelmensis*, pag. 276.

The life of Saint *Cuthbert*, pag. 282.

Thomas Sprot, a Monk of *Canterbury*, p 321. 322. 323. 357.

Petrus Blesensis his continuance of *Ingulphus*, p. 323.

Matthew Paris his lives of the Abbots of S. *Albans*, p. 329.

Original Instruments remaining there, p. 193. 338. 339 to 350. 359. 373. 379. 414. 415.

Anselmes Epistles, p. 376. 377. the published copy wants very many.

Giraldus Cambrensis his *Symbolum electorum*. p. 382. 383. 490.

Matriculus Ecclesiarum in Archidiacon. Leicest. p. 385.

Radulphus de Diceto, p. 388 389.

The ancientest Book of *Ely*, p. 412.

The Epistles of *Robert Grosseteste*, p. 430. 431.

The history of *Lichfield*, p. 482.

Gulielmus Pictavensis his life of *William* the first, p. 483. It is now on the Press at *Paris*, with other things belonging to *Normandy*.

In the Library of Mr. *Tho. Allen* of *Glocester* Hall.

Robert of *Glocester*, pag. 206.

Annals of the Monastery of *Burton*, pag. 216. 229. in margin. 232. 266. 422. 429. 433. And in that Volume are bound *Constitutiones cujusdam Episcopi*, cited pag. 231.

Turgotus Dunelmensis, pag. 229. in marg. & 276.

In Mr. *Patrick Yongs* Library.

Theodore Balsamon upon the Councils and some Canonical Epistles, in *Greek*, pag. 463.

In

In my own hands.

Our *Provincial Constitutions* in course of time, p. 236.

A Book of Constitutions and other things belonging to the Church of *York*, pag. 337. & 418. And a Reference is in page 232. to one of the Constitutions of the same Province, that I long since found in the Library of Mr. *Henry Savill*.

The Eir of *Darby*, of 4. of *Edward* the third, pag. 287.

Roger of *Hoveden*, pag. 202.

Exposition of *old Law-terms*, pag. 216.

An English *Penitential*, to direct Priests in Auricular Confession, pag. 169.

Two of those (commonly call'd) *Bretons*, much corrupted in the Print, pag. 390.

Bracton (much corrupted also in the Print.) pag 405.

The Printer to the Reader.

AS I found the Copy partly Printed partly Written, so is this done off. Neither thought I it fit to alter any thing without the Authors presence, whence even the syllables of those passages in which mention was as if it were yet but in part only Printed (as my Copy was) are also retained.

Library of the
UNION THEOLOGICAL SEMINARY
New York

XUM

HISTORY OF TYTHES.

That is,

The *Practice* of PAYMENT of them.

The *Positive* LAWS made for them.

The OPINIONS touching the *Right* of them.

A REVIEW of it

Is also annext, which both *Confirms* it, and directs in the use of it.

By *J. SELDEN.*

Nec partis studiis agimur. Sed sumsimus arma
Consiliis inimica tuis, IGNAVIA fallax!

M. DC. XVIII.

To the moſt honour'd

Sir ROBERT COTTON

of *Connington*,

Knight and Baronet.

Noble Sir,

JUſtice, no leſs than Obſervance, urges me to inſcribe this Hiſtory *of* Tythes *to your name. So great a part of it was lent me by your moſt ready Courteſie and able Direction, that I reſtore it rather than give it you. And it cannot but receive an increaſe of eſtimation from your intereſt thus ſeen in it. For to have borrow'd your help, or us'd that your ineſtimable Library (which lives in you) aſſures a curious Diligence in ſearch after the inmoſt, leaſt known and moſt uſeful parts of Hiſtorical Truth both of Paſt and Preſent Ages. For ſuch is that Truth which your Humanity liberally diſpenſes; and ſuch is that which by Conference is learned from you: ſuch indeed, as if it were, by your Example, more ſought after; ſo much head-long Errour, ſo many ridiculous impoſtures would not be thruſt on the too credulous, by thoſe which ſtumble on in the Rode, but never with any care look on each ſide or behind them: that*

is, thoſe which keep their Underſtandings always in a weak Minority that ever wants the Authority and Admonition of a Tutor. For, as on the one ſide, it cannot be doubted but that the too ſtudious Affectation of bare and ſterile Antiquity, *which is nothing elſe but to be exceeding buſie about nothing, may ſoon deſcend to a Dotage; ſo on the other, the Neglect or only vulgar regard of the fruitful and precious part of it, which gives neceſſary light to the* Preſent *in matter of* State, Law, Hiſtory, *and the* Underſtanding of good Authors, *is but preferring that kind of Ignorant Infancy, which our ſhort life alone allows us, before the many Ages of former Experience and Obſervation, which may, ſo accumulate years to us as if we had lived even from the beginning of Time. But you beſt know this; in whom that uſeful part is ſo fully eminent, that the moſt Learned through* Europe *willingly acknowledge it: and ſo open hath your Courteſie ever made the plenteous ſtore of it to me, that I could not but thus offer you whatſoever is in This of mine own alſo, as a ſymbole of ſome thankfulneſs. It was at firſt deſtin'd to you. And however through the haſty fortune that (I know not why) it ſuffered at the Preſs, ſome pieces of it have been diſperſed without the Honour that your*

Name

Name might adde to them; I ſhall be yet ever ſo ambitious of that Honour, that tho whole ſhall never (for ſo much as I can prevent) be communicated without this prefixt teſtimony of Duty to you. Receive it favourably, Noble Sir, and continue to me that Happineſs which I enjoy in that you neither repute me unworthy of your Love, nor permit me in Ignorance when I come to learn of you.

From the *Inner-Temple*,
April IV. cIↃ. DC. XVIII.

THE

IT hath even ſo happen'd with not a few of the Malicious (what through lazy Ignorance, what through peeviſh Jealouſie) at their firſt ſight or hearing of the name of this *Hiſtory of Tithes*, as it was wont with thoſe raw Novices, that, upon their firſt admiſſion to the ſacred Myſteries of the Gentiles, troubled and frighted themſelves with a world [a] of falſe Apparitions while they thought of what they ſhould ſee in the inmoſt Sanctuary at the unknown preſence of their Deity. And doubtleſs, the Prieſt had not a little work to perſwade them that what they ſhould there meet with, was not an unlucky *Empuſa*, not a formidable *Mormo*, not a wanton *Cobalus*, not a miſchievous *Fury*, not indeed any thing that their idle brains, being ſuch meer ſtrangers to the abſtruſeſt parts of Truth, had faſhion'd out. The many fancies that Malice, Ignorance, and Jealouſie have fram'd to themſelves touching this of Mine, have been no leſs ridiculous; and ſome equally fearful, but equally falſe. And I muſt here firſt play the Prieſt alſo, and ſo clear, if it were poſſible, thoſe Fancies, by proteſting that it is not written *to prove that Tythes are not due by the Law of God*; not written to prove *that the Laity may detain them*, not to prove *that Lay hands may ſtill enjoy Appropriations*; in ſum, not at all *againſt the maintenance of the Clergie*. Neither is it any thing elſe but it ſelf, that is, a meer Narration, and the *Hiſtorie*

[a] *Proclus in Platonic. Theolog. lib. 1. cap. 3. & lib. 3. cap. 18.*

rie of Tythes. Nor is the law of God, whence Tithes are commonly deriv'd, more diſputed of in it, than the Divine Law, whence all Creatures have their continuing ſubſiſtence, is enquired after in *Ariſtotles* Hiſtory of living Creatures, in *Plinies* Natural Hiſtory, or in *Theophraſtus* his Hiſtory of Plants; or than the Juſtice of the old Courts of *Rome*, is examin'd in *Brodæus* his Hiſtory of them, or the convenience of the Civil and Canon Laws in that of *Rivallius*. Nor was any thing, that belonged to the Title, purpoſely omitted. Nor was any piece of it ſtoln from any other mans notes. That as the reſt alſo hath been moſt maliciouſly imputed by ſome that ſo impudently dare conjecture (though they be far enough from being either—*arte aut ſcientia Divini*) and as judiciouſly cenſure it or me, as thoſe in *Lucian*, could *Euripides*, that were weekly ſtark mad in Rime till Winter, by reaſon of what they had heard of his Tragedies in Summer, and could neither judge at all of what they ſaid nor yet poſſibly hold their peace. But they know, there are never wanting long ears ready ſtretcht out to baſe detraction; and that animates them. I know not how otherwiſe to confirm theſe proteſtations than by ſending him, that believes me not here, to the view of the whole. He may be there further ſatisfied: and ſhall then ſee alſo that it is not of the Pitch of the Doctrine of the Breviarie, or within the compaſs of Pocket-learning. Nor will it, I think, look like what were patcht up out of *Poſtils*, *Polyantheas*, common places

place Books or any of the reſt of ſuch excellent Inſtruments for the advancement of Ignorance and Lazineſs. Nor is any end in it, to teach any Innovation by an imperfect Pattern had from the muſty Reliques of former time. Neither is *Antiquity* related in it to ſhew barely what hath been (for the ſteril part of *Antiquity* which ſhews that only and to no further purpoſe, I value even as ſlightly as dull Ignorance doth the moſt precious and uſeful part of it) but to give other light to the Practice and doubts of the preſent. Light, that is clear and neceſſary; nor could ſuch as have ſearcht in the ſubject ſee at all often, for want of ſuch Light. But *illos non peto, piſcem peto.* Neither hath it at all wanted the moſt approving cenſures of ſuch as are of choiceſt Learning, ableſt Judgment, and truly *Decumatiſſimi* aſwell in worth as Title. Nor is it at all material what any one ſhall caſt on it through his ſecure confidence only, in any of thoſe old [a] Enſigns of diſſembled Ignorance or Gravity, the Beard, the Habit, and Title. It is for ſuch to learn by, not at all to cenſure. And none of the Ingenuous and Learned, that read it, will be backward, I think, to allow it for Truth, as he did that firſt licenſed it for the Preſs with *Ita eſt*, and ſubſcription of his Name.

a *Iſidor. Peluſiota l. 1. Epiſt. 29.*

But we leave this prepoſterous Admonition in Negatives (yet by reaſon of the head-long importunity of ſuch as have in great number already miſconceived it, they were neceſſary and could not elſewhere have had ſo fit place) and ſhortly thus delineate what it is by the *end and purpoſe*

poſe of writing it; by the *Argument* of it; by the *Courſe* of compoſing it; and by the *ſum of performance* in it in behalf of the *Clergie*.

For the firſt, we find that in the frequent Diſputations about Tithes, not only Arguments out of holy Writ for proof of a *Divine Right* to them, but matter alſo of *Fact*, that is, *Practice* and *Story*, is very often uſed; as the *kinds of payment* of them among the *Ebrews*, among the *Gentiles*, the *Maintenance of the Church* in the Primitive times, the *Arbitrary Conſecrations*, *Appropriations* and *Infeodations* of them in the middle times, the *Payment of them at this day* in the ſeveral States of Chriſtendom, together with the *various Opinions and poſitive Laws* touching them. For, *Opinions* and *Laws*, as they are related only and fall under the Queſtion of what and whence they were, are meerly of *Fact*. And proofs are hence often drawn to confirm ſundry occurrences in enquiry for the truth on either ſide. That of the *Divine Right* of them is ſo wholly a point of Divinity and handled ſo fully by divers *Schoolmen*, ſo imperiouſly by moſt of the *Canoniſts*, and ſo confidently by ſome of our *late Divines*, that whatever could be ſaid touching that only, by inference out of the holy Text (which muſt be the ſole tryal of it) would but ſeem taken from ſome of them which have ſo purpoſely diſputed it. Neither were that ſo fit to be medled with by any as by a profeſt *Divine*. But for that other part which falls under *Hiſtory*, there is not one of them all which having boldneſs enough

to adventure on it (which he disputes withall of the *divine right*) shews not also too much either Ignorance or Negligence in talking of it, being usually deceiv'd and deceiving in it those most of Readers that give their Historical Faith captive to bare Names and common reputation. And as in that old [c] Picture of *Homer* the rest of the following Poets greedily swallowed whatever he had vomited forth; so among these, one so rashly receives herein error from another, and so increases it, that there was never found a better example of the old Proverb *Sardi Venales*, or worse and worse, than in most of their multiplyed Pamphlets of it: which of them relates towards what is fit to be known touching the payment among the *Ebrews*? among the *Gentiles*? among *Christians* of former time? nay, which of them seem to know or to have heard of the chief *human positive Laws* made for Tithes? yet would they gladly use them if they had them. Where is there among them an ingenuous discovery of the *various Opinions* of past Ages that belong hither? Who of them once touches the right ancient course of setling Tithes at first in Monasteries, Colledges, or other such Corporations, by *Appropriations* and *Consecrations* of them? Who of them tells us other than meer Fables, while he talks of the original of *Infeodations*? and with what patience can you read those which, as great Doctors, talk of *Exemptions*, and pretend themselves to the world for such as discover the most secret curiosities, or *cornicum oculos configere*, tell us

c Ælian. ποικιλ. ἱστ. lib. 13. cap. 22.

us of four Orders exempted, and make the *Hospitalers* and those of *S. Johns* of *Jerusalem* to be two of them, with other such most gross and ridiculous absurdities? and it is a common, but most deceiving argument among them, affirmatively to conclude *Fact* or *Practice* of Tithing from what they see ordained for Tithes in any old *Canon* of the Church: as if every thing so ordained, necessarily had also a following use: it being indeed frequent enough to find Canons directly contrary to following Practice; and that even in the proceedings of the Canon-Law, which (as the body of it is) was never received wholly into practice in any State, but hath been ever made subject in whatsoever touches the temporalties or maintenance of the Church (which come from Lay-men) to the variety of the secular Laws of every State, or to National Customs that cross it. Is it enough to prove that Parish Churches, in *England*, were regularly ever to be repaired by the Parsons, because the general [*d*] Canon Law is so? or that a Clergy man might not have bequeath'd any chattels wherein he had right in respect of his Church, because also by that [*e*] Law he might not? in *England*, general Customs of the contrary in both Cases still [*f*] held, and in many other as you see in *Lindwood*, who knew both the general practice here and the Canons, and often also teaches their differences in other cases: very many like may be found in other States, by comparing their immemorial Customs and old Ordinances that are against the Canons,

[*d*] *Extr. tit. de Eccl. adific. c. 4. de bis.*

[*e*] *Extr. tit. de Offic. judicis Ordinarii c. 4. cum vot.*

[*f*] *Lindwood. a. Nullus tit. de consuetudine. & tit. de offic. Archidiac. Archidiaconi. verb. reparationes. & testamenti. c. ut Clerici. verb. legitima.*

and that both in the Eastern and Western Churches: and for the Eastern Canon Law, passages are found to this purpose in *Zonaras* [g] and *Balsamon*, the two chief and ancient Canonists of that part. The Laity at pleasure commonly limited the Canon Law especially where it toucht their dignities or possessions (and that aswell before *Luther* so derogated from the autority of it by burning it at [h] *Witteberg* in a publick Assembly, in despite of the Pope, as after) which might be manifested by a world of examples: but it is most clear to all that know History. To argue therefore from affirmative Canons only to Practice, is equal in not a few things (and especially in this of Tithing) to the proving of the practice of a Custom from some consonant Law of *Plato*'s Common-wealth, of *Lucian*'s men in the Moon, or of *Aristophanes* his City of Cuckoes in the Clouds. To supply therefore the want of a full and faithful Collection of the *Historical* part, was the *end* and *purpose* why this was composed which might remain as a furnisht Armory for such as enquire about this Ecclesiastique Revenue, and preferring Truth before what dulling Custom hath too deeply rooted in them, are not unwilling to change their old Akorns for better meat.

[g] Videsis utrosque *in Can. Conc. Chalced.* 12. & 6. *in Trullo* 38. & 55. & *Balsam. in Chalced Can.* 15 & 28. *praeter id quod de Agapio & Gabadio* Episcoparum *Bostrenorum petentibus, subjungitur Concilio Carthaginiensi.*

[h] *Sleidan. Commentar. lib.* 2.

As touching the *Argument* of it; the whole being XIV. Chapters, the first VII are thus filled, the *first* hath what is, in best authority of the ancients, belonging to those Tithes paid before the *Levitical* Law: the *second* the several kinds paid by

by the *Jews* under the Law: and this from *Ebrew* Lawyers. The *third* ſhews the Practice of the *Romans*, *Grecians*, and ſome other *Gentiles*, in paying or vowing them. Then the whole time of Chriſtianity being quadripartitely divided (with allowance of about XX. years more or leſs to every part) takes up the next *Four* Chapters, in which the *Practice of payment* of Tithes, *Arbitrary Conſecrations*, *Appropriations*, *Infeodations* and *Exemptions* of them, eſtabliſhment of *Parochial right* in them, as alſo the *Laws both Secular and Eccleſiaſtick*, with the *Opinions* of *Divines* and *Canoniſts* touching them, are in their ſeveral times manifeſted; but ſo only, that whatſoever is proper to this Kingdom of *England* either in *Laws* or *Practice*, either of *Payment* or of *Arbitrary Conſecrations*, *Appropriations*, or *Infeodations*, or eſtabliſhment of *Parochial right*, together with a Corollary of the *ancient Juriſdiction* whereto they have been here ſubject, is reſerved all by it ſelf to the next *Seven* Chapters. But every of the XIV. have their Arguments prefixt, which may diſcharge me of further Declaration in this place. By this time, I truſt, you conceive what the name of *Hiſtory* in the Title pretends: and the *Tythes* ſpoken of purpoſely in it (for perhaps it is needful to admoniſh that alſo) are only ſuch as either have been paid, vow'd, or dedicated to holy uſes, or elſe give light to the conſideration of the performance or omiſſion of ſuch payment. Neither the *Decimæ Saladinæ*, nor the *Decimæ Papales* (which were

wont to be impoſed) nor the *Decima litium* in the Imperials, nor the old *ratio Decimarum* upon the *Lex Pappia*, have had place here, nor the like, which are no more to this ſubject than the Tithes paid to the Crown by our Clergie, or by thoſe of the Burroughs by grant in Parliament, or the *Terrages* in Tenths reſerved by Leſſors often in *France* and *Spain*, or the Tenths anciently paid in ſome places, as Impoſt upon Merchandiſe, or that old Cuſtom of *England*, in paying the *Aurum Reginæ*, that is a Tenth part of as much Money to [*i*]her as was given at any time to the King, or other ſuch. Nor had the Tithes of houſes in *London*, place here [*k*] otherwiſe than as they occur in thoſe Acts of Parliament and the Decree under *Henry* the eight, that mentions the Miniſters maintenance by the name of Tithes. For before that Decree, however the LII. Farthings paid on Sundays only were near the juſt Tithe of every X^s. Rent (that is about ½) and were perhaps thought on by that name (as may be collected out of *Lindwood*) yet theſe join'd with the other Offerings of great Feſtival days, made up indeed only a certain competency of maintenance, but could not properly be reputed among Tithes; neither in regard of their *Value*, nor (as compared with the ancient Inſtitution of Tythes among the Jews) in reſpect of their *Nature*. For their *Value* came to much more than a Tithe, as alſo that doth which hath the name of Tythe at this day in *London*; neither is there reaſon enough why the LII. farthings that were offer'd

i De ea re conſulas ſi plura velis. *Joſcelinum de Barkland*, cap. 14. Ms. in Bibl. Cottoniana & Codicem illum *Gervaſii Tilburienſ.* dictum in *Scaccarii Archivis*, k Chap. 8. fol. 39.

on

on Sundays should be severally, and as divided from the other Offerings, thought on to this purpose. And for their *Nature* before these Acts and the Decree; I here offer only what I find in a short discourse, tituled, *A Devise how the Curats of London may be provided of sufficient Livings*, written under *Henry* the Eight, and remaining yet among the Records of the Exchequer: The Author of it first shews that all Ministers of Gods word should give freely their labours in the Church, and be maintain'd of the Tithe of the free gifts of the Earth; as of Cattel, Corn, and Fruit; which he supposes is as freely given them by the Almighty, through the labour of the people, as the preaching of the Word and administration of Sacraments is to the people through the labour of the Ministers. But he permits not that any money or other profit, being not *living gifts*, as he calls them, is by the Law of God Titheable: so that where no such *living gifts* and increase are, there no Tithes (as Tithes) are payable to them, as he concludes. Nor indeed is any mention of other Tithes in the *Levitical* Law, than of the encrease of the earth in Fruit and Cattel, that is of the gain only out of those more natural Trades (which [*l*] *Aristotle* elegantly stiles βίοι αὐτόφυτον ἔχοντες τὴν ἐργασίαν) of tilling the Earth and breeding of Cattel, and that which holy Writ calls תְּבוּאָה *Theboah*, that is, *increase* or *revenue*, where the Law of predial Tithing is iterated, is understood by the *Jewish* Doctors of the fruits and increase, given us out of the soil; and

l Polit. a. cap. 1.

and is well Paraphraſed by the Septuagint when they turn it τὰ γενήματα τῆς γῆς, that is, *the increaſe of the earth:* and in the vulgar it is expreſſed by *fruges.* But then, *It is to ſe by what Law Curats of Churches in* London *can have* (ſo are the very ſyllables of that diſcourſe) *any living of the people otherwiſe but like as the people by their own conſents will give them for ther Office doing. In very dedde they muſt have levyngs to kepe them out of neceſſite: and thereby it is to ſe how in* London *they cannot receyve ther levyngs of Godd by no lively gifts of grace, like as in the Countrey. But in* London *they muſt receive their levings of mens gifts; that is mony which is every mans own, for their Office doing. The* Pope *by his Law nor by his Bulls cannot compell no man te giffe his own gode to theym for their Office doing more then people will conſent to giff theym: for* Chriſt *ſaith that their leving is freely given them of Gbdd, if they do ther Office to ſee all peple worke. Therefore that if the peple have not labors and levings, they ought to have none, nor can make no Law whereby to axe no mans goode. Therefore that leving which they have had in* London *hath been by the conſents of the peple which hath long time given them* xiv^{d}. *of every noble rated by the rents of Houſes which hath been riche levings: wherewith they not content but over that hath procured of the peple money ſo many weys by caſualties of Beryals, Cryſtnings, Weddings, Obits, and Offerings, yhe and ſecretly rifelyth mens conſtiences taking privy Tithes of whatſoever they can get, be it out of evil goten goodes: howſoever*

they

they can get it, they call it their duty. And thence he ſays ſome Benefices were worth C^li. ſome LXXX^li. ſome C. marks, others L^li. and then he ſhortly adviſes how the Miniſters maintenance ſhould be otherwiſe there limitted and levied. But who ſees not enough now that what is called *Tithes of houſes* in *London*, is rather call'd ſo only than is at all ſo? yet becauſe the name of Tithes in thoſe Acts of Parliament, is given to the Minſters maintenance there, it had been perhaps reputed negligence to have omitted the remembrance of them, in the *courſe* of compoſing it. The Teſtimonies were choſen by weight, not by number; taken only thence whither the margin directs, never at ſecond hand. Neither affected I to muſter up many petty and late names for proof of what is had wholly by all from ancient Fountains. The fountains only, and what beſt cleared them, ſatisfied me; and I ſuppoſed every judicious Reader would be ſo beſt ſatisfied alſo. For in meer matter of elder ſtory, what credit can *Nauclerus*, *Cario*, *Cuſpinian*, or the numerous reſt of latter time, add to the teſtimonies of thoſe Ancients yet extant, from whom they borrowed what ever they have new dreſt of preceeding ages? *Petrus Comeſtor*, or *Ludolphus de Saxonia*, may as well increaſe the credit of holy Writ, as thoſe other may the truth of ſuch Hiſtories as inſtructed them in common with the reſt of poſterity. Neither at all wiſh I that this of mine ſhould gain any ſtrength of Truth from my name alone, but from thoſe authorities which I have de-

ſigned and brought, both for Elder, Late, and Preſent times, out of ſuch both Printed and Manuſcript *Annals*, *Hiſtories*, *Councils*, *Chartularies*, *Laws*, *Lawyers*, and *Records* only as were to be uſed in the moſt accurate way of ſearch that might furniſh for the ſubject, yet alſo I have not neglected the able judgments of ſuch of the learned of later time, as give light to former ages, but I ſo prefer'd the choiceſt and moſt able, that I have wholly abſtain'd from any mention or uſe here of thoſe many Ignorants that (while they write) rather inſtruct us in their own wants of ability, than direct to any thing that may ſatisfie. If through ignorance I have omitted any thing in the Hiſtory or the Review, that deſerved place in them; who ever ſhall admoniſh me of it ſhall have a moſt willing acknowledgment of his learning and courteſie. But all the bad Titles that are ever due to abuſe of the holieſt obteſtation, be always my companions, if I have purpoſely omitted any good authority of ancient or late time, that I ſaw neceſſary, or could think might give further or other light to any Poſition or part of it: For I ſought only Truth, and was never ſo far ingaged in this or ought elſe as to torture my brains or venture my credit to make or create Premiſſes for a choſen Concluſion, that I rather would than could prove. My Premiſſes made what Concluſions or Conjectures I have, and were not bred by them. And although both of them here not a little ſometimes vary from what is vulgarly receiv'd, yet that happen'd not at all from any

any desire to differ from common Opinion, but from another course of disquisition than is commonly used; that is, by Examination of the truth of those Suppositions which patient Idleness too easily takes for clear and granted. For the old Scepticks that never would profess that they had found a Truth, shew'd yet the best way to search for any, when they doubted aswel of what those of the Dogmatical Sects too credulously receiv'd for infallible Principles, as they did of the newest Conclusions; they were indeed questionless too nice, and deceiv'd themselves with the nimbleness of their own Sophisms, that permitted no kind of established Truth. But plainly, he that avoids their disputing Levity, yet, being able, takes to himself their liberty of enquiry, is the only way that in all kinds of Studies leads and lies open even to the Sanctuary of Truth, while others, that are servile to common Opinion and vulgar suppositions, can rarely hope to be admitted nearer than into the base court of her Temple which too speciously often counterfeits her inmost Sanctuary: and to this purpose also is that of † *Quintilian*, most worthy of memory, *Optimus est in discendo, patronus incredulus.*

† *Instit Orator. lib. 12. cap. 8.*

For the Sum of the Performance in behalf of the Clergy; I dare confidently affirm, that never before was there towards so much Humane Law Positive for the Payment of whole Tithes, observed to publique view as is here discovered; and that especially in the VIII. Chapter for the Clergy of *England*. And plainly he

that talks of Tithes without reference to ſuch *poſitive Law*, makes the object of his diſcourſe rather what he would have ſhould be, than any thing that indeed is at all. For what State is in all Chriſtendom wherein Tithes are paid *de facto*, otherwiſe than according to humane Law poſitive? that is, as ſubject to ſome Cuſtomes, to Statutes, to all civil diſpoſition. If they be in truth due, *Jure Divino* (which Divines muſt determine of) they remain equally ſo aſwell after as before humanLaws made touching them. But that is a queſtion dayly controverted; and among the Clergy. Now, who-ever diſputes it, and relyes only on *Jus Divinum*, or the holy Scripture, for the right of Tithes, doth but make way for him, whom he cannot perſwade that they are due by the law of God, to think that they are no way due. Which queſtionleſs was the original cauſe of the Opinions of ſuch as faſly taught them not at all payable, but arbitrarily as Alms, even ſince Parochial right in them eſtabliſhed; I mean the *Dominican* and *Franciſcan* Fryers, and thoſe other of a far different ſtamp, *Wicliffe*, *Eraſmus*, and the like. Had they ſufficiently thought of the Conſtitutions and Practice of Chriſtian States, whereby Tithes had been variouſly dedicated for the maintenance of the Evangelical Prieſthood, and ſetled for other holy uſes, either by continuance of time, by the owners conveyance, or by any ſuch other civil Title (the ſtrength whereof is immediately founded in human Law) what colour could they have

have had to think that they had been only Alms? for whatever is lawfully eſtabliſhed by a civil Title, is clearly *debitum Juſtitiæ*, not *Charitatis*. What brain then, except one bewitch'd, can think that human poſitive Law and common Practice, which uſually either declares or makes alſo a poſitive Law, are not moſt carefully to be ſought after in inquiries touching this ſacred Revenue, which is no otherwiſe enjoyed in any State than as that Law hath ordained and permits. And let *Human Laws*, *Practice*, and *Opinions* be as their Authors will; yet whatſoever argument may be found in the law of God for the right of Tithes, remains ſtill as untoucht and equally of his former power, as the heat and light of heaven ever did, notwithſtanding the uſe of Fire had upon earth. And the truth is, that divers of them that writ, with more will than judgment, for Tithes, fall often from their *Jus Divinum*, before they are aware, and talk of them as ſuppoſed due alſo by human poſitive Law of Practice. But they are far enough from ſhewing what or where that Law or Practice is. What do they elſe, when they confound Tithes and conſecrated lands together? and apply that to Tithes which is equally to be ſpoken of lands given to the Church? I truſt they mean not that the Church had an original Title alſo, *Jure Divino*, to lands arbitrarily conſecrated to it. Let not then either the purpoſe or convenience of this Hiſtory be valued, from what diſtemper'd Malice, Ignorance, or Jealouſie have cryed it down with in corners.

The learned Frier *Bacons* moſt noble Studies being out of the rode of the lazie Clergie of his time, were vehemently at firſt ſuſpected for ſuch as might prejudice the Church. *Reuchlin* and *Bude*, the one for his *Ebrew*, the other for his *Greek*, were exceedingly hated becauſe they learned and taught what the Friers and Monkes were meere ſtrangers to. Others about their time had like Fortune. Neither was any one thing in the beginning of the Reformation ſo unwillingly receiv'd or more oppos'd by ſuch as labour'd that Ignorance might ſtill continue in her triumph, than that ſingular light to the clearing of error, the Greek Text of the New Teſtament, firſt publiſht in print by *Eraſmus*; and it was ordain'd (as he ſaies) under great penaltie in I know not what Colledge of *Cambridge*, that no Fellow of the houſe ſhould be ſo impious as bring it within the gates. For the World hath never wanted ſtore of ſuch Blocks laid in the way of Learning, as willingly endure not any part of curious diligence that ſeeks or teaches whatſoever is beyond their commonly received *Nihil ultrà*. But there are others that both can judge and do wiſh for all light to Truth; ſuch they were that even while *Ignorance* yet held her declining Empire defended thoſe Worthies, *Bacon*, *Bude*, *Reuchlin*, *Eraſmus* and the reſt that ſuffered: and to doubt whether this of mine ſhall find ſuch alſo, were but to queſtion whether every man were yet a malicious Rebel to Truth, and wholly without Ingenuity, that performs even as much in foſtering her, as Time doth in breeding her.

But

But neither is the Work alone taxt by miſtaking of the Subject, but alſo in regard of the Author; what hath a *Common Lawyer* to do (ſo they murmur) with Writing of Tithes; for by that name it pleaſes them to ſtile me; and I muſt confeſs, I have long laboured to make my ſelf worthy of it. But I would their diſcretions alſo would deſign out to whom it belongs more to write the *Hiſtory of Tithes*, than to a *Common Lawyer*. I expect not ſuch a ſottiſhneſs, as that they ſhould ſo much as dream it to be more proper to any of the other ſingle profeſſions of this Kingdom; except to a *Divine*, or a *Civilian*; under which name, becauſe thoſe which practice the Canon Laws here (according as the Common Laws permit) take their Degrees, in the Civil Law, I comprehend alſo the Canoniſt; and uſe hath here made the name of *Civil Law*, to denote [a] both *Civil* and *Canon*. For the *Divine*; what is there in the courſe of his Study reſtrained to his profeſſion, that can near enough inſtruct him in the *Laws* and *Practice*, eſpecially of the *Chriſtian* times. Nor is the *Practice* or *Laws* of Tithes among the *Jews*, as they are delivered & interpreted by their Doctors, more indeed reſtrained to the courſe of *Divinity*, than of *Law* and *Hiſtory*. But ſhould a Civilian rather have dealt with it? if he; then either (according to what we underſtand by that name in *England*) as a *Civilian*, or as a *Canoniſt*. If as a *Civilian*; he ſhould then have made that proper to himſelf touching which, in the whole body of his Law (though

[a] *Alberic. Gentilis de poteſtate Regis abſoluta*, Sect. diſput. 1.

(though he take in alſo *Theodoſius* his Code, the *Baſilica* and the *Novels* of the latter Eaſtern Emperors) not the leaſt mention is found of Tithes belonging to the Church. Indeed, a caſe is put by *Ulpian* of [b] vowing of Tithes, which ſome old ignorant and barbarous Doctors underſtand of Tithes among Chriſtians. But they were long ſince laught at for it by him that [c] firſt happily labour'd in the reſtoring to that Profeſſion, the loſt neatneſs and elegancy of the Text. That was clearly ſpoken of the Roman uſe only, & of vowing to *Hercules*, or the like. But ſhould the *Civilian* as a *Canoniſt* have done it? what in all his *Decrees*, *Decretals*, and *Extravagants*, though he joyn many armies of his Doctors, directs him to the *Practice* of the *Jews*, *Gentiles*, or *Chriſtians*? where ſhall the *Canoniſt* or the *Civilian*, or the *Divine*, in the courſes of their proper ſtudy, find the many *Secular Laws* made in behalf of the Clergy for Tithes? where the ancient practice of payment? If it be clear then (as I hope none hath the impudence to deny it) that neither the *Divine*, nor *Civilian*, nor *Canoniſt*, by the courſe of their own appropried Studies, can come to what is neceſſary in the knowledge of the *Hiſtory of Tithes*, it will be as clear that none of them could challenge the medling with it as a right ſpecially belonging to any of their Profeſſions. But neither indeed is it proper to any one alone of thoſe that are commonly made Profeſſions. The truth is, both it and not a few other enquiries of ſubjects too

b L. 2. *Si quis* ff. *de policitat.*

c *Budæus ibid.* & *in l. quicunque* ff. *de Inſtitut. actione.*

too much unknown, fall only under a far more general Study; that is, of true *Philologie* the only fit Wife that could be found for the moſt learned of the Gods. She being well attended in her ἐγκύκλια διακονήματα, or daily ſervices of Enquiry, by her two Hand-Maids *Curious Diligence* and *Watchful Induſtry*, diſcovers to us often from her raiſed Tower of Judgment, many hidden Truths, that, on the level of any one reſtrained Profeſſion, can never be diſcerned; and every Profeſſion takes from her to it ſelf (as it was long ſince [*d*] obſerv'd) ſome neceſſary part not elſewhere to be ſought for; not much otherwiſe than as the Subaltern Sciences do from their Superiors, or as they all do from that *Univerſality* or *Firſt Philoſophy*, which is but the more real part of true *Philologie*, and eſtabliſhes principles to every Faculty that could not of it ſelf alone know how to get them. But is not the company of this great Lady of Learning, with her Attendants, as fit for a Student of the *Common-Laws of England*, as for any other, pretending what Faculty ſoever? I never heard that ſhe was engaged alone to any beſide *Mercury*. Nor find I any conditions in the Marriage 'twixt her and *Mercury*, that ſhe ſhould favour any one particular Profeſſion more than another. I know there have been and are many Common Lawyers of other States (for every State in Chriſtendom is governed by its own *Common Laws* and *Cuſtoms*, and hath truly its *common Lawyers* as is further ſhew'd towards the end of the *Review*) ſo far from be-

[*d*] Apud *Mart. Capellam lib. 2. de Nuptiis Philologiæ & Mercurii, & de Philologes aliquot veris conſulat. Quintilian. Inſtit. Orator. l. 2. cap. ult.*

ing ſtrangers to Her that they are all to be reputed of her chiefeſt Darlings; and ſome of them are hardly equalled among any other Profeſſors; witneſs in *France* thoſe ever honour'd names, *Bude*, *Cuiacius*, *Briſſon*, *Tiraquel*, *Pithou*, *Paſquier*, *Le Thou*, *Ærault*, *Berterie*, *Savaron*, and others; in the Empire, *Gruter*, *Freher*, *Ritterhuſe*; in the United Provinces, *Groot*, *Heuter*, and the like elſewhere. For theſe all were or are practicers of the various *common* or *ſecular Laws* of their own Nations, although they ſtudied the *Imperials* and *Canons* in the Univerſity; and who of the Learned knows not what light theſe have given out of their ſtudies of *Philologie*, both to their own and other Profeſſions? and that in rectifying of Story, in explication of good Authors, in vindicating from the injury of time both what belongs aſwel to ſacred as prophane ſtudies? why then may not equally a *common Lawyer* of *England* uſe this *Philologie*? and by conſequent be a fit Author of this *Hiſtory of Tythes*, as of a proper iſſue of *Philologie*? it being indeed much more proper alſo to Philologie in a Common Lawyer, than in one of any other Profeſſion. For the two chief parts of it (that is, *Practice* of payment and the *Laws* of Tithing, that either are in force or ever were received touching them in any State) were always and are part of the proper Object of his Studies: and what ever *Divines* or *Canoniſts* conclude of them; it is the *Secular* or *Common Laws* only that according to Cuſtoms, and various Ordinances permit or reſtrain the

the Canons in legal exaction of them, and that in other States aſwell as in *England*: for howſoever it be affirm'd by [*e*]ſome which enough accurately think not of it, that the Clergy every where in the Weſtern Church, being ſcarce a hundreth part of the People, are enricht with whole Tithes of Fruits of the Earth and of Cattel; yet it is certain that in no State of that Church, whole Tithes are univerſally paid. But frequently Cuſtoms, not only of a *Modus* but *de non decimando* are by force of Secular Law practiſed: witneſs for the Empire, is in that Diet of [*f*] *Norimberg* under *Charles* the Fifth, where the Lay-Princes of the Empire complain againſt the Church for offering to put their Canons for Tithes in practice; *Etſi Laici per multa annorum curricula de certis eorum prædiis, neq; majores neque exiguas, ut vocant, præſtiterint Decimas, &c.* As much for *Spain* is in [*g*] *Gouarruvias*; for *Italy*, [*h*] in *Vgolin*, [*i*] *Cajetan*, and others; for *France*, in *Papon* on the Cuſtoms of *Burbon*, *Boerius* on thoſe of *Berry*, *de Graſſalio*, beſide the many Arreſts of Parliament that are adjudged againſt the Canons. But theſe things are more particularly ſhew'd in the 7th. Chapt. wherein (as in the reſt) we have affected rather what is Autority enough, than what is various. Who now can ſhew colour why this was not a Work proper enough for a Common Lawyer? But this whole Premonition, I think, is as well more than is neceſſary to the truly judicious, as it may perhaps ſeem leſs than what ſatisfies to the numerous Pretenders, that neither know any way

e *Rodin. de Republ. lib. 5. c. 2.*

f *Comit. Norimberg. 1522. Gravamine 45.*

g *Variar. Reſol. lib 1. c. 17. & Practic. qu. 35.*

h *De Officio & poteſtate Epiſc. part 1. cap. 9.*

i *Ad 22. D. 18. q. 87.*

that lies out of their beaten Rode, nor value Books but as Stationers do, nor admit willingly of any other kind of Studies than ſuch as are more like ſordid Occupations than Liberal Profeſſions. But I ſtay you too long here, Reader. Try now how I have perform'd my promiſe; ſpare not to try with your moſt cenſorious examination;

———ſed magis acri
Judicio perpende; & ſi tibi Vera videtur,
Dede manus; aut, ſi Falſa eſt, accingere contra.

THE

Of Tithes *before the Law.*

CAP. I.

I. Melchizedek *had Tithes only of the Spoils of War given him by* Abraham. Ἀκροθίνια *denotes Spoils of War, and perhaps alſo Profits taken from the ground, or* Ruta cæſa.

II. Jacobs *Vow and payment of Tithes. Both* Abraham *and* Jacob *were Prieſts when they paid Tithes. In whom the Prieſt-hood was before the Law.*

III. *Whether any certain Quantity were obſerved in the Offerings of* Cain *and* Abel.

IV. *A Cabaliſtick Operation in numbers by which Tithes and the Firſt-Fruits, offered by* Abel, *might have a myſtical identity. Such operations were amongſt old Chriſtians alſo, but meerly vain.*

How among the Jews *Tithes were paid or thought due.*

CAP. II.

I. *Firſt-Fruits, and Heave-Offering (that is* ſixtieth parts *at leaſt) firſt were paid out of the* Fruits *of the Earth.*

II. *The firſt Tithe was paid to the Levites (who out of that paid a Tithe to the Prieſts) and then the ſecond Tithe.*

III. *The errour of them that make a third Tithe. The ſecond Tithe of every third year ſpent on the Poor: What they take the Year of Tithing to ſignifie in* Deuteronomy.

ὀπιδέκατον δώσεις τῷ Λευίτῃ καὶ τῷ προσηλύτῳ· and that is, *when thou hast ended the Tithing of all the fruits of thy ground, in the third year, the second Tithe thou shalt give to the Levit, and the stranger, &c.* as in the common text. Where plainly, you see, the poor mans Tithe is expresly called the second Tithe, which justifies our Division. Doubtless, they there instead of שנת המעשר *shenath hamaigsher*, that is, *the year of Tithing* (as the text is) found in their *Hebrew* Copies, שנית המעשר *shenith hamaigsher*, which they took for the *second Tithes*, knowing that in truth that place meant no other. Divers passages in their translations are upon such differences; and they oftentimes give thence a kind of commentary as well as a translation. Neither is it ill context, that *shenith* of the fœminin gender should be joynd to *maigsher* of the masculin. It is not without frequent example in holy Writ. That their word ὀπιδέκατον (not very usual for Tithe) was most proper, and hath no worse original then [1] *Athens* it self, where by that name the Tenth of Mulcts and Goods confiscat, was sacred to *Minerva*. But this place of the *year of Tithing*, is interpreted by the common Gloss of the Jews *by the year of one Tithe*, as if the text had been שנת המעשר אחר, that is, *the year of one Tithe*, or *of paying only one Tithe*. Which in substance exactly agrees also with the meaning of the *Septuagint*. For in the third year, says *Iarchi*, there was only one Tith paid of the two commonly spoken of; that is of the first and second. The first was only paid to the *Levites*. The second, by that name, was not: but the poor

[1] *Xenoph. hist. Græc. α*

[2] *Solomon Iarchi ad dict. loc. Deut.*

poor mans Tithe inſtead of it: and he ſo expounds it, that he takes the mention of the *Levites* there to deſign out the firſt Tithe of that third year paid at *Jeruſalem*, which plainly alſo confirmes what is here before declared. The *ſecond* then, and the *Tithe of the third year* are the ſame in ſubſtance. The payment of all appears in this example.

IV. After the firſt-fruits paid in ears, admit

The increaſe 6000. Ephahs; the *heave-Offering* at leaſt muſt be 100.

The remainder 5900. The *firſt Tithe*, 590. and out of this 59. to the Prieſts.

The remainder 5310. Out of this, the *ſecond Tithe*, 531. which every two years the *Levits* had at *Jeruſalem*, and every third year was ſpent in the gates of the husbandmen.

The reſt being 4779. was kept for the husbandman.

So that of 6000. Ephahs, the Levits and poor had in all 1063. whole to themſelves, the Prieſts 159. and the husbandman only 4779. He yearly thus paid more then a *ſixt part of his increaſe*, beſide firſt-fruits; almoſt a fift. Many of no ſmall name, groſly ſlip in reckoning and dividing theſe kinds of their Tithes. But this here delivered, is from the holy text and the *Jewiſh* Lawyers.

V. Of their *Cattel*; the *firſt-born* were [7] the Lords, paid to the Prieſt of clean beaſts in kind; of unclean in mony, with a fift part added. Of the in-

[7] *Exod.* 13. 2.

creaſe of them, one Tithe only was paid, and that to the Levites. *Every Tithe of Bullock and of Sheep, of all that goeth under the Rod, the Tenth ſhall be holy to the Lord*, ſays holy [1] Writ. Thence at the Tithing they uſed to ſhut the Lambs (for example) in a ſheep-cote, where the ſtraitneſs of the door might permit but one at once to come out. Then, opening the door, either gently to hunt them out, or by placing the Ewes bleating near them without, ſo to cauſe them run forth one by one, while a ſervant ſtanding at the door with a rod coloured with Oker, ſolemnly told to the Tenth; which with his rod he markt: So they [2] underſtand going under the Rod: that ſo markt, whatever it were, male or female, worſt or beſt, was the Tithe, and might not be changed.

[1] Levit. 27. 26, & 32.

[2] Iarchi ad Levit. cap. 27. & Rambam in Maſſech. de primogenitis, c. 7.

VI. How the payment of theſe Tenths was either obſerved or diſcontinued, partly appears in holy [3] Writ, partly in their inſtitution of more truſty Over-ſeers (whom they called נאמנים) for the true payment of them. For after the new dedication of the Temple by *Judas Machabæus*, until his fourth ſucceſſor [4] *Joannes Hyrcanus* (being near thirty years) all duly paid their *firſt fruits* and *Therumahs*, but the *firſt* or *ſecond Tithe* few or none juſtly; and that through the corruption of thoſe Overſeers. Whereupon their great *Sanedrim*, or Court of ſeventy Elders (that is, the בית דין הגדול, that is, *the greateſt Court*, that determined alſo, as a Parliament, of matters of State) enacted, that the Overſeers ſhould be choſen of honeſter men; and withal, that of ſuch things, whereof, by ſuch corruption, or otherwiſe,

[3] 2. Paralip. 31. Malach. 3. & Nehem. cap. 13.

[4] Rambam de decimis, cap. 9.

otherwiſe, it was indifferently doubtful; whether Tithe were juſtly paid or no (of which kind, almoſt all increaſe, at the time of this act made, was a *heave-Offering* or *Therumah* of the Tenth of all, that is, a *hundreth part*, ſhould be given to the Prieſts, and then the ſecond Tithe at the Temple ſhould be paid, but no firſt Tithe, or poor mans Tithe, was paid of any ſuch things. Theſe kind of goods they called דמאי *Demai*, whereof a ſpecial *Maſſecheth* or treatiſe is in the *Talmud*, in the *Seder Zeraim*. From that act of the *Sanedrim*, to the laſt deſtruction of the Temple, it ſeems, the Juſt payment of Tithes continued; and thereof teſtimony is (for the time near the deſtruction) in [1] holy Writ. But in *Tithing* and offering *Therumahs*, the Phariſees were moſt curious and devout; they gave perhaps *Tithe* after both the *Legal Tithes* paid, beſide *fiftieth parts*, and ſometime *thirtiths* for their *Therumahs*. So may be underſtood that of them, [2] ἀποδεκάτων ϗ τῶν δεκάτων, τὰς ἀπαρχὰς ἐδίδουν, τεσσαρακοντάδας τι ϗ πεντηκοντάδας, which you may interpret, *they tithed what was already tithed, they gave firſt fruits, thirtith parts, and fiftith parts.* But I dare not juſtify the tranſlation. Neither do I believe, that *Epiphanius* there ſufficiently underſtood what they did in their Tithing, nor is his meaning eaſily, I doubt, apprehended. The like may be, with modeſty enough too, ſaid of S. [3] *Chryſoſtome*, ſpeaking of the Jewiſh Legal liberality to the Levites. Ἐννόησον, ſays he, ὅσα Ἰουδαῖοι ἐδίδοσαν, δεκάτας, ἀπαρχὰς, πάλιν δεκάτας, ϗ πάλιν ἄλλας δεκάτας ϗ πάλιν τὰς ἑπτὰ ἑορτὰς τεσσαρακαιδεκάτας ϗ τὸ σίκλον, ϗ ἕδεα; ἕλεγε ὅτι πάλλα ἰδίωτων. *Obſerve but how much the Jews gave*

[1] *Ep. ad Hebr. cap. 7. 9.*

[2] *Ephiphan. lib. 1 hareſ. 16. Vide ſi placet Caſaubon. ad verſ. Baron. pag. 63. & 64.*

[3] *In ſerm. 103. tom. 6. p. 879. & λογ. θ. in Epiſt. ad Philippenſes, tom. 4 pag. 54. editione Savilian.*

(to their Levites and Priests) *as Tenths, first-Fruits, then Tenths again, then other Tenths, and again other thirteenths, and the* [1] *Sicle, and yet no man said they eat* (or had) *too much*. So are his words in two places of his works exactly the same; saving only that in one the variety of reading hath τρεσκαιδεκάδας for *thirteeenths*. I confess I equally am ignorant of both; neither is his enumeration consonant with what the Monuments of the Jews or the holy Text will warrant. Conjectures upon it I leave to others, some probable enough might here be brought, but I willingly abstain.

[1] Exod. 30. 12.

VII. That tithing of [2] πᾶν λάχανον, every herb, which is spoken of in the Gospel, (and observed by the *Scribes* and *Pharisees*) was never commanded in Scripture, nor by their Canon-Law requisit, according to the opinion of their Doctors, who restrain the payment of Tithes to that [3] הבואתך, that is, *thy increase*, spoken of by *Moses*; and comprehend not herbs under that name. They deliver indeed that by tradition from their fathers, all things growing out of the earth, and fit for mans meat, are titheable, which their [4] Lawyers thus regularly express, כל אובל אדם הנשמר שגידוליו מן הארץ חייב בתרומות רכן במעשרות, that is, *Every thing that is kept as mans meat, and hath his growth from the earth, must pay the heave-Offering, and likewise Tithe*; Whence they make such herbs as are mans meat titheable, but all such as are not mans meat, they discharge of Tithes. And out of that rule also they except whatsoever was gleaned [5] either out of ears of

[2] Luc. 11. 42. Math. 23. 23.

[3] Deut. 26. 12.

[4] Ramb. part. 3. tract. de Therumoth. c. 2. & Mikotzi in præcept. 145.

[5] Lev. 19. 9, & 10.

of Corn, or Grapes, or had out of the corners of the field left in harveſt. But it ſeems, that for this payment of Herbs, the Phariſees were of the truer ſide. Our Saviour likes well their payment, and expreſly ſays, *they ought not emit it*, which admonition of his was to them while yet the Moſaical Laws were not all expired by the *conſummatum eſt*.

VIII. After the ſecond Temple deſtroyed, and diſperſion of the *Jews*, their Law of *firſt-fruits*, *Therumahs* and *Tithes*, with them ceaſed. For their Doctors determine that regularly no inhabitants, but of the land of Iſrael, were to pay any; although alſo among them be a wiſe exception for the lands of *Senaar*, *Moab*, *Ammon*, and *Ægypt*, becauſe the firſt is near their land of *Iſrael*, and many *Iſraelites* went thither and dwelt there, and the other three are round adjoyning their land of *Iſrael*. But they deliver that who ſo of them took the profits of land mongſt the *Cutheans* or *Samaritans*, their old enemies (or elſewhere in *Aram*; and ſo, it ſeems, by conſequent, in any other land, ſaving which they except) was not to pay any, touching which point many ſpecial caſes are put by [1] *Rabbi Ben Maimon*. At this day by their Law they pay none, thoſe that live in their land of Iſrael, for want of their Prieſthood and Temple; thoſe that live diſperſed in other Countries, both for that reaſon, as alſo for the other which reſtrain the payment of them to *Canaan*. And herein they all agree. But the great *Joſeph Scaliger* ſays, he askt ſome of them whether, if they might again build their Temple (as after the captivity they did)

[1] *In Iad. Chazaka trac. Therumah, c. 1. & Mekziin Præcept. 133.*

did) their Laws of Sacrifices, firſt Fruits, and Tithes would be then revived; and their anſwer was, that to build it again were to no purpoſe, becauſe they had no lawful Prieſthood, there being not one of them that can prove himſelf a Levit, though many pretend to be ſo, and ſome bear alſo the office of a kind of Prieſthood amongſt them. And (for example herein among our own Anceſtors) when the Jews lived here they had, it ſeems, one general or high Prieſt over them, uſually confirmed at leaſt, if not conſtituted, by the King, for life; as appears by Record, proving that both *Richard* the firſt and King *John* did by their Patents grant the ſame. The Copy of it being a moſt rare example and not from this purpoſe, take here tranſcribed. *Rex omnibus fidelibus ſuis, & omnibus & Judæis, & Anglis ſalutem. Sciatis nos conceſſiſſe, & præſenti Charta noſtra confirmaſſe* Jacobo *Judæo* de Londoniis *Presbytero Judæorum*, Presbyteratum omnium Judæorum totius Angliæ, *habendum & tenendum quamdiu vixerit, libere & quiete, honorifice, & integre, ita quod nemo ei ſuper hoc moleſtiam aliquam aut gravamen inferre præſumat. Quare volumus & firmiter præcipimus quod eidem* Jacobo *quoad vixerit* Presbyteratum Judæorum per totam Angliam, *garantetis, manuteneatis & pacifice defendatis; & ſi quis ei ſuper eo forisfacere præſumſerit, id ei ſine dilatione (ſalva nobis emenda noſtra) de forisfactura noſtra emendari faciatis, tanquam Dominico Judæo noſtro quem ſpecialiter in ſervitio noſtro retinuimus. Prohibemus etiam ne de aliquo ad ſe pertinente ponatur in placitum, niſi coram nobis aut*

1 Rot. Cart. 1. Reg. Joh. part. 1. memb. 28. Cart. 171.

aut coram Capitali Justitia nostra, sicut Carta Regis Richardi *fratris nostri testatur. Teste S. Bathoniensi Episcopo, &c. Dat. per manus H. Cantuariensis Archiepiscopi Cancellarii nostri apud Rothomagum* XXXI. *die Julii anno Regni nostri primo.* It's true that *Presbyteratus* might denote aswell some Lay-eldership: but as 'tis unlikely that in that age the Clergy-men that were officers of the Chancery, and most commonly drew the Patents, at least judged of the language, would transfer their name of *Presbyteratus* to any such signification; so also I suppose that any such Lay or Civil Officer among them, could not have escaped often mention in the Records of Judaism, yet remaining. Many of them I have perused, but never met with the name elsewhere than in this Roll. But to this Priest *Jacob* or other like him among them, no Tithes, first-Fruits or Therumahs, were, or are by their Canons payable. And agreeing to them expressly herein is [1] *Eusebius*, who, amongst other of their Mosaical Laws, puts their paying of Tithes for one specially that was confined to the land of *Israel* and *Jerusalem*. For, first reciting that about eating the Tithes in the place, [2] *which the Lord shall chuse to cause his name to dwell there*, (which indeed is only spoken of the second Tithe of the first and second years) and joyning it with the general commandement of Tithing, and with the precepts of the Passover, of the feast of Weeks, and of Tabernacles. In which a certain *Place* by such an indefinit designment is also mentioned, he adds at length with reference to them all; Διὰ πάντων οὖν τὸν τόπον

[1] Ἀποδ. εὐαγγελ. lib. 2. cap. 2.

[2] Deut. 14. 23. & cap. 16.

τόπον ὀπισημαινόμενος τοσαυτάκις τε εἰπῶν εἰς αὐτὸν ἀπαντᾶν παγγενεῦ καὶ πανοικαὶ, πῶς ἂν ἥρμοζε τοῖς τῆς Ἰουδαίας καὶ ὀπὶ μίκρον διεστῶσι, μήτι γὲ τοῖς καθ' ὅλης τῆς οἰκουμένης ἔθνεσι· *seeing in so many things he designes out a particular place, so often commanding them to meet there (every Tribe, every Houshold) how can it fit them* or belong to them, *that dwell but a little out of* Judæa? *much less the Nations of the whole world.* But those feasts he speaks of, the Jews at this day observe, although not accurately according to *Moses* his Laws.

Tithes *how paid, or due among the* Gentiles.

CAP. III.

I. *Some* Romans *paid to some Deities, and sometimes only, a Tenth of* spoiles; *of procede of merchandize; of their* estates; *but usually also by* vow, *which bound the Heir or Executor.*

II. Festus *is falsly cited for a* general custom *of payment of Tithes among the Ancients.*

III. *Examples of Tithes paid amoug the* Græcians.

IV. *How the assertions of a* general use *of giving Tithe to the Gods among the* Græcians, *are to be understood; and why* δεκατεῦσαι, *that is,* to Tithe, *signifies also* to Consecrate.

V. *A Tithe paid to* Hercules *of* Tyre; *and* Sabis *an* Arabian *Deity, the same with* Jupiter Sabazius.

I. THe custom of the *Gentiles*, usually talkt of in offering a Tenth, is chiefly to be considerd in the *Romans* and *Græcians.* The *Romans*

mans had a kind of devotion of giving Tithes, but neither yearly, nor by compulſory Law, as ſome falſly, but confidently, through ignorance in human literature, deliver. The wealthier of them, divers times uſed to tithe their eſtates to *Hercules*, by ſpending the tenth in ſacrifices, gifts to his Temples, feaſts in his honour, and the like. It appears ſo, and to be no otherwiſe, by[a] *Plutarchs* words, in his queſtioning the reaſon of it. Διὰ τί, ſays he, τῷ Ἡρακλεῖ πολλοὶ τῶν πλουσίων ἀδεκάτευτον τὰς οὐσίας; *Why do many of the rich men tithe their ſubſtance to Hercules?* and elſewhere[b] he (as other Ancients) notes it as a ſpecial devotion of ſome of the ſons of Fortune. Neither is old *Caſſius*[c] otherwiſe to be underſtood, where he derives *Hercules* his Tenth from an innovation made by *Recaranus* in *Evanders* time. This *Recaranus*, he ſays, firſt taught them to give the Tenths of their fruits to *Hercules* (to whom he conſecrated an Altar under the name of INVENTORI PATRI, after he had regained his herds that *Cacus* had ſtoln) rather than to the King as before the uſe was; and then he adds, *inde videlicet tractum ut Herculi Decimam profanari mos eſſet*; that is, *thence came it to be a cuſtom, that divers did pay him a tithe.* But, neither by their Law, Civil or Pontificial, was this payment. Often it was a thankſgiving after ſome increaſe of fortune, and often by vow beforehand, and for the moſt part, of increaſe of eſtate by mony gotten upon ſales, and of ſpoiles of war. For ſuch things that made acceſſions to their eſtates, they were ſometime ſo thankful. Whereat *Cicero* jeſting ſays, that ne-

[a] *In quæſt. Romanis.*

[b] *In Lucullo, alibi & Diodor. Siculi Bibliothec. 5.*

[c] Apud *Aurel. Vict. in Orig. Gent. Rom.*

& ad prata poſtea vel ad paſturam redactis, ita ut occaſione mercedis ſervientum vel meſſorum decima parte non fruſtrentur quo minus eam plene percipiant. Detentores vero earundem Decimarum ſi ſemel, ſecundo, & tertio commoniti exceſſum ſuum non emendaverint; concedimus quod per capellanos locorum uſque ad ſatisfactionem congruam excommunicationis vinculo feriantur. Cum autem hi qui decimas detinuerint vel ſubtraxerint ad pœnitentiam acceſſerint, non admittantur niſi per ſe vel per manum ſacerdotis ei, cui decimæ debentur, ſatisfaciant competenter.

[t] *Conſtit. Eborac. Ms.*

XXV. A Conſtitution for due paiment of Tithes [t] was made about 30 *Hen.* 3. by *Walter Gray* Archbiſhop of *York*. I have only a note of it which I took out of the Ms. but the words I could not now tranſcribe for want of the Copy. The Copy it ſelf I once ſaw in the Library of Mr. *Henrie Sævil* who is now with God.

XXVI. The chiefeſt of the *Engliſh* Canon Laws, made for Tithes (both predial and perſonal) is that commonly atributed to a Councel of *Robert Winchelſey* Archbiſhop of *Canterburie*, held in 23. *Ed.* 1. at *London*; ſome Copies [r] referring it to Archbiſhop *Boniface* and the time about 30. *Hen.* 3. or to an old Synod of *Merton*. But in the Synod of *Merton* held 42. *Hen.* 3. no part of it is extant. That I examined in the [t] Annals of the Abbey of *Burton* where the Canons of that Synod are at large collected. Yet in

[r] *Vide Lind. in Provinc. Conſtit. de Dec. quoniam propter* in præfationem.

[t] *Ms apud V.C. Tb. Allen, Oxon.*

in the *Pupilla oculi*, written by *John de Burgo* x Part 9. cap. 5.
Chancelor of *Cambridge*, in M. CCC. LXXXV. it is called *Conſtitutio facta apud Merton per omnes Epiſcopos Angliæ*. Theſe are the words of it, as it remains in the body of the Provincial Conſtitutions. Quoniam propter diverſas conſuetudines in petendo Decimas per diverſas Eccleſias inter rectores Eccleſiarum & Parochianos ſuos, rixæ, contentiones, ſcandala & odia maxima multotiès oriuntur. Volumus & ſtatuimus quòd in cunctis Eccleſijs per Cantuarienſ. Provinciam conſtitutis, veniformis ſit petitio Decimarum & proventuum Eccleſiarum. Imprimis volumus quod decimæ de frugibus, non deductis expenſis, integrè & ſine aliqua diminutione ſolvantur: & de fructibus arborum: & de ſeminibus omnibus, & de herbis ortorum niſi Parochiani competentem fecerint redemptionem pro talibus decimis. Volumus & ſtatuimus etiam quod decimæ de fœnis ubicunq; creſcant, ſive in magnis pratis ſive in parvis ſive in cheminis exigantur, & prout expedit Eccleſiæ perſolvantur. De nutrimentis autem animalium ſcilicet de agnis; Statuimus quod pro ſex agnis & infra, ſex oboli dentur pro decima. Si ſeptem ſint agni in numero, ſeptimus agnus detur pro decima rectori, ita tamen quod rector Eccleſiæ qui ſeptimum agnum recipit, tres obolos in recompenſationem ſolvat parochiano

" à quo decimam illam recepit. Qui octavum
" recipit, det denarium. Qui verò nonum, det
" obolum parochiano vel expectet rector usque
" ad alium annum donec plenariè Decimum a-
" gnum possit recipere si maluerit: & quum ita
" exspectat semper exigat secundum agnum me-
" liorem vel tertium ad minus de agnis secundi
" anni: & hoc pro expectatione primi anni. Et
" ita intelligendum est de Decima lanæ. Sed si
" oves alibi in hieme & alibi in æstate nutrian-
" tur dividenda est decima. Similiter si quis me-
" dio tempore emerit vel vendiderit oves, &
" certum sit à quæ parochia illæ oves venerint;
" earundem dividenda est decima sicut de re
" quæ sequitur duo domicilia. Si autem incer-
" tum fuerit, habeat illa Ecclesia totam deci-
" mam infra cujus limites tempore tonsionis in-
" veniuntur. De Lacte verò volumus quod de-
" cima solvatur dum durat; videlicet de caseo
" tempore suo. Et de lacte in autumno & hye-
" me nisi parochiani velint pro talibus facere
" competentem redemptionem, & hoc ad valo-
" rem decimæ & commodum Ecclesiæ. De pro-
" ventibus autem molendinorum volumus quod
" decimæ fideliter & integrè solvantur. De pa-
" sturis autem & pascuis tam non communibus
" quam communibus statuimus quod decimæ
" fideliter persolvantur: & hoc per numerum
" animalium & dierum ut expedit Ecclesiæ. De
" piscationibus & apibus sicut de omnibus aliis
" bonis

"bonis juſte acquiſitis quæ renovantur per an-
"num, ſtatuimus quod decimæ ſolvantur & ex-
"igantur debito modo. Statuimus etiam quod
"decimæ perſonales ſolvantur de artificibus &
"mercatoribus ſcilicet de lucro negotiationis.
"Similiter de carpentariis, fabris, cementariis
"textoribus, pandox atricibus, & omnibus a-
"liis operariis ſtipendariis, ut videlicet dent
"Decimas de ſtipendiis ſuis niſi ſtipendarii ipſi
"aliquid certum velint dare ad opus vel ad lu-
"men Eccleſiæ ſi rectori ipſius Eccleſiæ placue-
"rit. *Then a word or two of Mortuaries; after*
"*which*, Sed quoniam inveniuntur multi Deci-
"mas ſponte dare nolentes; Statuimus quod
"parochiani moneantur primo ſecundo & ter-
"tio ut decimas Deo & Eccleſiæ fideliter ſol-
"vant. Quod ſi non emendaverint primò ab in-
"greſſu Eccleſiæ ſuſpendantur, & ſic demùm ad
"ſolutionem decimarum per cenſuram Eccle-
"ſiaſticam, ſi neceſſe fuerit, compellantur. Si au-
"tem dictæ ſuſpenſionis relaxationem vel abſo-
"lutionem petierint: ad ordinarium loci mit-
"tentur abſolvendi: & debito modo puniendi.
"Rectores autem Eccleſiarum ſeu Vicarii aut
"Capellani annui qui predictas decimas pre-
"dicto modo propter formidinem hominum ſeu
"favorem, timore Dei poſtpoſito, ut predictum
"eſt, cum effectu non petierint: pœna ſuſpen-
"ſionis innodentur donec dimidiam marcam
"argenti pro ſua inobedientia Archidiacono

"loci persolvant. And then follow two other Constitutions, under *Winchelsey*'s name, for some more peculiar order in payment. But that first referr'd to him, is in a Ms. [y] (written of about the time of *Henry* the sixth) of the *English* Episcopal Constitutions, severally thus titled, *Constitutio Domini Stephani de Langtone Archiepiscopi edita de modo Decimandi. Stephen* of *Langton* was Archbishop under King *John*. But it is not extant in the Synod of his time.

y In Biblioth. autoris.

XXVII. In a Gouncel at *London* under *Simon Mepham*, Archbishop of *Canterbury*, held in 3. *Ed.* 3, a [z] Canon is against such as hindered Church-men from taking their Tithes, either by keeping them and their servants from entring into the Land, or by exacting * Gloves, Stockings, or some such bribes, before they would permit them take that right, which God, as it is there inserted, *in signum universalis Dominii sibi reddi præcepit, & pro suo cultu Clericis assignavit.* All such offenders are branded with excommunication: and another Constitution of a Councel of *Pauls*, held in 17. *Ed.* 3. under *John Stretford* Archbishop of *Canterbury*, is to the self-same purpose.

z Extat, in Constit. Provinc. lib 3.

* Conqueritur etiam de hac injuria *Jo. de Athena in Constit. Otheboni e. mandata Dei. verb. Justitiam sævr expellit.*

XXVIII. For Tithe of Copis-Wood, or *Silva cædua*, also in that of *Stretford*, was a * Canon in these words: Quanquam exsolventibus benè Decimas Deus frugum omnium abundantiam & possessionem promiserit ubertatem:

* Extat. in Bl.

" tatem: tamen dolentes referimus quod non-
" nulli noſtræ Provinciæ contra teſtamenti ve-
" teris atque novi doctrinam de ſylvis ſuis cæ-
" duis & lignis arborum cæduarum exciſis circa
" quæ minus, quàm circa fructus agrorum, labo-
" ris impendunt, Decimas Deo & Eccleſiis qui-
" bus debentur notoriè, propter hoc quod ipſas
" in præteritum non dederunt, ſolvere contra-
" dicunt. Quòd eſtimant idcirco licere quod Le-
" gem moris de longa invaluiſſe conſuetudine
" arbitrantur, in dubium etiam revocantes quid
" ſilva cædua ſit cenſenda. Nos igitur adver-
" tentes quod ſi ſua portione Eccleſia ſit de-
" fraudata diutinè, crimen præterea non minui-
" tur ſed augetur: ac fames & penuria omni-
" umque rerum egeſtas opprimunt bene Deci-
" mas non ſolvente; hujuſmodi declaramus
" poviſione Concilii Silvam Cæduam, illam
" fore quæ cujuſcunque exiſtens generis arbo-
" rum in hoc habetur ut cædatur, & quæ eti-
" am ſucciſa rurſus ex ſtirpibus aut radicibus
" renaſcitur; ac ex ea Decimam utpote rea-
" lem & prædialem Parochialibus ac Matrici-
" bus Eccleſiis perſolvendam; nec non ſilvarum
" poſſeſſores hujuſmodi ad præſtationem Deci-
" marum lignorum ipſorum exciſorum in eis,
" ſicut fœni & bladorum omni cenſura Eccleſi-
" aſtica fore Canonicè compellendos. By this, Tithe of all kind of Wood was payable. But in the [a] Parlament with which that Convocation was

[a] *Rot. Parl.* 17. *Ed.* 3. *nt.* 28.

was held, a Petition was exhibited by the Commons, *Que nul home ſoit tret en plee en Court Chriſtien pur Diſmes de bois ou de ſouth bois ſi noun en lieux ou tielx Diſmes ſoloient eſtre donez.* And the anſwer was, *Soit fait de cella auxi come il ad eſts fait einz cez heures.*

XXIX. And the year following, in the next Parliament, a [b] complaint was againſt that conſtitution by the Commons. *Item prio le Commun que come conſtitution ſoit fait per les Prelats a prendre Diſme de cheſcun mannere de Bois quel choſe ne fuit unques uſee, & que nieſs & femes poent faire teſtament que eſt contre reſon. que pleſe per lui & per ſon bon conſeil ordainer remedie, & que ſon people demoerge en meſme l'eſtate qu'ils ſoloient eſtre en temps de tonts ſes progenitours, & que Prohibitions ſoient grantes a touz ceux que ſom empledes de Diſmes de bois ſans avoir conſultation.* Which was no otherwiſe anſwered, but with, *Le Roy voet que ley & reſon ent ſoint faits.*

[b] *Rot. Parl. 18. Ed. 3. art. 9.*

XXX. Three years after, in [c] 21. *Ed.* 3. a Petition was touching the ſame matter put thus in by the Commons. *Item monſtre la Commun come nadgaris Lercevеſque de Cantirbiry & les autres Prelats ordenerent une Conſtitution a doner Diſmes de ſubbois venduz tant ſolement, la ou avant ces heures nulles Diſmes furent donez, ore les gentz de Seint Eſgliſe per force de la Conſtitution pernent & demandent les Diſmes auxibien de gros bois come de ſubbois venduz & nient venduz e-*

[c] *Rot. Parl. 21. Ed. 3. art. 48.*

contre

contre ce qu'ils ont uſez puis temps de memorie, a grant damage de la Commone de quoi ils prient remedie del un point & del autre. To this is anſwered. *L'ercevesque de Canterbiry & les autres Evesques ont responduz que tiele Diſme neſt demandee per reſon de la dit Conſtitution forſque de ſubbois.* But I well conceive not why they complain of the Conſtitution, as made only for the Tithe of Wood ſold. No ſuch thing appears in it, that juſtifies their ſuppoſition.

XXXI. This thing of Wood, and of ſuch other things as were not of Cuſtome paid, ſtill vexed the Commons. And therefore again in a Parliament[d] of 25. *Ed.* 3. they exhibit this Petition. *Item prie la Commone, que ſi la Clergie en droit des Diſmes de haut bois & ſouthbois ou d' autre choſe riens demandent ou attemptent de novel forſque ſolement ceo & en les lieus d'ont ils ont eſte d' aunciens temps ſeiſis come en le droit de lour Egliſes, que pleiſe a noſtre Seignior le Roy ent granter Prohibition ſans Conſultation a touz ceux que le voillent demander en tiel cas, & que les dites gents de S. Egliſe ſoient defenduz a demander Diſmes de groſſe bois.* Here the Commons would have had ſuch a liberty of diſcharge of Tithes not uſually paid, as the *Philippine* in *France*, and the like Edicts of ſome other Nations give the Subject. But the anſwer was, *Le Roy & ſon Conſeil ſe voillent de ceſte Petition aviſer.*

d *Rot. Parl. Fiſt. Hill. 25. Ed. 3. art.* 37.

XXXII.

XXXII. But upon new Petition, by the Lords Temporal and Commons in the Parliament of 45. *Ed.* 3. it was enacted (as you ſee in the publiſhed Statutes, agreeing with the Record) That Tithe ſhould not be exacted of great Trees, being of XX. years growth, or above. And that upon a Suit commenced in the Spiritual Court for ſuch Tithes, a Prohibition ſhould be granted, as it had been in former time alſo uſed. But that uſe, it ſeems, had been ſomewhat diſcontinued, through a reverence given to that Synodal Canon of Archbiſhop *Stretford*. Although in 50. *Ed.* 3 *fol.* 10. *b. Belknap* ſaies, That it was never ſeen, that Tithes had been demanded of great Trees and of Timber. This Statute hath had ſtill force in practice to this day.

[e] *Plowd. Comm. fol.* 470. 9. *Hen.* 6. *fol.* 56. *&c.*

XXXIII. Yet, notwithſtanding this Statute, the Clergy were not ſo contented; but under pretence that it was not indeed, by ſufficient authority, made a Statute, but only an Ordinance (the contrary whereof appears both in the Roll and in the conſent of following time) oft times afterward brought the Temporality in queſtion upon their Canons; in ſo much, that in the Parlament of [f] 47. *Ed.* 3. a Bill was put in by the Commons, reciting that of 45. *Ed.* 3. and then relating, that *les perſons de Seint, Eſgliſe entendants que cel Ordinance ne reſtreint my lour aunciene accrochements, ſurmettants aue ce ne fuiſt my*

[f] *Rot. Part.* 47. *Ed.* 3. *art.* 21.

my afferme pur Eſtatut, ſont occaſions in Court Chriſtien a contrarie del Ordenance ſuiſdit a grant damage del people, per qui pleiſe a noſtre Seignior le Roy d' aſermer la dite Ordenance pur Eſtatut a durer pur temps avenere, & que Prohibition eſpeciall ſur meſme Leſtatut de ceo ſoit fait en la Chancellerie defendant que eux ne tignent plee en Court Chriſtien des Diſmes de bois del age avant dit, that is, of XX. years. The anſwer hereto was, *Soit tiele Prohibition grantee come ad eſte uſe d'auncien temps.* Thus did the Clergy and Commons ſo differ touching the execution of the Canons; and inſomuch, that afterward alſo the Commons put in a Bill, [g] *Que nul Eſtatute ne Ordenance ſoit faite ne grante au Petition du Clergie ſi ne ſoit per aſſent de voz Commens. Ne que vous dites Commens ne ſoient obligez per nulles conſtitutions qu'ils font pur lour avantage ſanz aſſent de voz dites Commens. Car eux ne veullent eſtre obligez a nul de voz Eſtatuz ne Ordinances faitz ſanz lour aſſent.* But the Anſwer was only thus, *Soit ceſte mature declarè en ſpecial.* This by the way.

[g] *Rot. Parl.* 51. *Ed.* 3. *art.* 46.

XXXIV. Here may be [h] remembred that agreement in the Parliament at *Salisbury*, *Quòd conſultationes fieri debent de ſilva cædua, eo non obſtante quod non renovatur per annum.* But to what Parlament to refer that agreement, expreſſed by *Concordatum fuit coram Conſilio Regis in Parlamento &c.* I ſufficiently know not, unleſs

[h] *Regiſt. Orig. fol.* 4. *a.*